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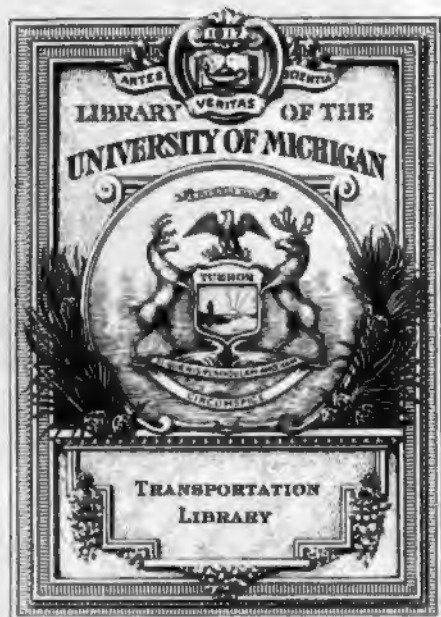
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5, **INTERSTATE COMMERCE COMMISSION. REPORTS.**

**VOLUME 2.**

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**REPORTS AND DECISIONS**

**OF THE**

**INTERSTATE COMMERCE COMMISSION**

**OF THE**

**UNITED STATES.**

**April 5th, 1888 to March 25th, 1889.**

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**REPORTED BY THE COMMISSION.**  
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**NEW YORK:**

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**1889.**

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**DECISIONS**  
**OF THE**  
**INTERSTATE COMMERCE COMMISSION.**

---

**JOHN H. MARTIN AND M. H. MARTIN v. THE  
SOUTHERN PACIFIC COMPANY, THE CENTRAL  
PACIFIC RAILWAY COMPANY, AND THE UN-  
ION PACIFIC RAILWAY COMPANY.**

Tried December 16, 1887.—Report filed May 17, 1888.

**Mixed** car-load lots of freight are treated in different ways under the classifications employed in different parts of the country, resulting in much confusion and annoyance to shippers, especially upon traffic passing from one section to another. The immediate adoption of a uniform and reasonable rule urgently recommended.

**Classification** of dried fruits and raisins, both California products, in different classes, taking different rates of freight, works an injustice to shippers. In all matters of classification clearness and simplicity should be aimed at, and irregularities and inconsistencies should be eliminated.

**Rates** obtained by combination, which produce a lower rate than the tariff calls for, are unjust, because they enable an intelligent shipper to obtain an advantage over one who has less information; and they are illegal because they show two rates to the same point, over the same line, at the same time. The tariff rates should not exceed the combination rates in any case.

**Violation** of the fourth section of the Act can be accomplished by differences in classification as well as by differences in tariff rates.

**Canadian** competition at the present time does not justify a higher charge from San Francisco to Denver than to Kansas City, it having been withdrawn at the latter point, and the Canadian road now working upon an agreement as to rates with the roads in the United States at all points where it formerly competed.

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The great distance of Denver from the Missouri River of itself denotes an impropriety in the charges to that point which exceed those to Kansas City.

*In re* Louisville & Nashville R. R. Co. (1 I. C. C. R., 31) affirmed: and in accordance with the principles there laid down the conclusion follows that the greater charge for the shorter haul complained of in the present case cannot now be justified.

The Commission prefers to permit the carriers to work out for themselves all tariff details; and accords a reasonable time for that purpose.

*Patterson & Thomas* and *J. R. Doolittle*, for complainants.

*McDonald, Bright & Fay* and *Charles H. Tweed*, for the Southern Pacific Company.

*A. J. Poppleton, Shellabarger & Wilson*, and *John S. Blair*, for the Union Pacific Railway Company.

*Charles H. Tweed*, for the Central Pacific Railway Company

#### REPORT AND OPINION OF THE COMMISSION.

**WALKER, Commissioner:**

The complainants are wholesale grocers doing business at Denver, Colorado. Their complaint alleges that a much greater sum is charged for transportation of freight from San Francisco to Denver over the defendants' lines than is charged to Kansas City, 600 miles further east, and that the charge to Kansas City added to the charge on the same articles from Kansas City back to Denver, makes a less rate than the charge from San Francisco to Denver direct.

The answer of the Central Pacific Railway Company disclaims any participation in the traffic in question, its road being under lease. The answers of the Southern Pacific Company and the Union Pacific Railway Company claim that the higher charge for the shorter haul from San Francisco to Denver than to Kansas City, is justified by the competitive circumstances and conditions attending the longer traffic, and deny that the rates are less from San Francisco to Kansas City and thence back to Denver than from San Francisco to Denver direct.

The commodities in respect to which the complaint was

made are dried fruits and raisins produced in California. The facts which are found from the evidence are as follows:

In July, 1887, John H. Martin, one of the complainants, was in San Francisco, and there purchased 6,400 lbs. of dried fruits, and 14,525 lbs. of raisins. After making inquiries of the agent of the Union Pacific Railway Company at that point, and of others, in respect to freight rates, he forwarded said articles, on August second, over the lines of the defendants, *via* Ogden and Cheyenne, consigned to his firm in Denver. The consignment aggregated 20,925 lbs., or a little more than the minimum car-load shipment, which, on the lines in question, is 20,000 lbs. No rate had been definitely agreed upon in advance of the shipment, and the firm was charged at the rate of \$2.30 per hundred on the dried fruits, and \$2.65 per hundred pounds on the raisins, aggregating five hundred and thirty-two dollars and eleven cents (\$532.11) freight, which was paid on receipt of the goods at Denver on August ninth.

The charges so collected were assessed under the Western Classification, which was then in force upon the business in question, and which called for a third-class rate on dried fruits and a second-class rate on raisins, in less than car-load shipments. The same classification placed the same articles in car-load lots, dried fruits in the fourth class, and raisins in the third class, the rates on which respectively were \$1.95 and \$2.30.

Complainants in the previous winter had received a car-load consignment of similar goods, from San Francisco to Denver, at the rate of \$1.30 per hundred. They protested vigorously in respect to the charge collected on August ninth of \$532.11; the former rate would have been but \$272.03.

*First—Mixed Car-loads.* It is obvious that the first question arising under these facts relates to what is known as "mixed car-load lots," where two or more articles, each having a car-load rate, are united to form a single car-load in the same consignment.

Upon this subject the Western Classification contains the following provision :

“No two or more articles having a car-load rate shall be shipped in mixed car-loads at the car-load rate, unless so provided for in the classification.”

The same classification, under the heading “Dried Fruit,” contains the following :

“NOTE.—All dried fruit taking the same classification in L. C. L. and in C. L. may be taken in mixed C. L. at the C. L. rate.”

Dried fruits and raisins under this note were not entitled to be taken in mixed car-loads at the car-load rate because their classification was not the same. The charge exacted was in precise conformity to the requirements of the tariff and classification then in force.

The Interstate Commerce Commission, in connection with an informal complaint concerning the charges upon a certain shipment of wine and brandy in a single car from the Pacific coast had meanwhile taken up the subject of mixed car-loads, in correspondence with the general traffic manager of the Southern Pacific Company; in the course of which the fact was developed that the rule of the Western Classification, above noted, was very different from the rule of the Pacific Coast East Bound Through Freight Classification, which was and is used upon business from the Pacific coast to points on the Missouri river and beyond. Rule 12 of the latter classification reads as follows :

“*Articles Taking Different Rates—Car-loads.* Following articles of a kind, as grouped, may take rates to which each class is entitled on its own weight. Example : 12,000 lbs. of beans and 8,000 lbs. of peas will take car-load rate for each article. Shipment must bear one mark and be to one consignee : .

“Alcohol, high wines, pure spirits, whisky, bitters, brandy, and wine (California), ale, beer and porter; beans and peas; bones, hoofs, and horns; borax and

borax pulverized ; brimstone and sulphur ; flour and mill stuffs ; fruit, vegetables, meat and fish canned, and fruit preserved, and sauces in glass or wood ; fruit and vegetables of all kinds (green) ; fruit dried, and raisins ; leather of all kinds ; maccaroni and vermicelli ; tea and tea dust."

This correspondence finally resulted in the application to business governed by the Western Classification of the rule in respect to mixed car-loads found in said Pacific Coast East Bound Classification, upon said trans-continental line.

Applying the present rule to the shipment in question, and the charge would have been :

Dried fruits, class 4, 1.95, 6,400 lbs.....	\$124 80
Raisins, class 3, 2.30, 14,525 lbs.....	334 07
Total.....	<u>\$458 87</u>

A new edition of the Western Classification has since been issued, which contains no change in respect to this subject. It appears, therefore, that under the Western Classification, which is in use by more than sixty different roads, two different rules are employed in reference to mixed car-loads—one the rule appearing in the classification itself, and the other the rule recently adopted as aforesaid upon the defendant and other trans-continental roads.

The manner in which this subject has been treated by the different railroads of the country has led to great confusion, which will continue until a common principle is established.

Official Classification No. 3, used on the roads east of the Mississippi and north of the Ohio, sometimes called the Trunk Line Classification, provides as follows :

"Rule 8 (A). When a number of different articles in packages of the same class are shipped at one time by one shipper to one consignee at one point of delivery, in full car-loads, they shall be taken at the rate per hundred pounds for such class in car-loads. If the articles are of more than one class the car-load rate and minimum car-load weight for the article in

the highest class shall be charged on all the articles that make up the car-load."

In the Classification of the Southern Railway and Steamship Association a rule reads thus :

" 'Car-load rates' applies to one shipment to one consignee of one article of freight to secure reduced rates where provided for by the classification."

The Texas Classification, on the other hand, enumerates thirty-four different groups of articles under the following note :

"The following articles as described and named below may be loaded in the same car, and on which car-load rates for their class will apply."

The Pacific Coast West Bound Classification provides that—

"On mixed car-loads the less than car-load rates will apply."

While the Southern Pacific Company, in respect to local tariffs on its Pacific system, has amended Rule 7 of the Western Classification as follows :

"Mixed car-loads of articles, for each of which a car-load rate is named, may take the highest car-load rate named on any of the articles in the lot, if for one consignee by one shipper."

It is apparant that in every case of a shipment of a mixed car-load of goods the shipper must possess and must carefully study the classifications in use throughout the whole route covered by the way bill in order to ascertain what the proper charge should be or whether he has been overcharged in the transaction. A shipment starting under one rule and passing into a territory where a different rule is in force is liable to have the rate increased unless the station agent at the initial point is thoroughly conversant with all the classifications ; and on the other hand, such a shipment is liable to be charged through to the destination upon the



less than car-load basis, while entitled to considerable reduction under other classifications before the destination is reached.

The aggregate amount of shipments in mixed car-load lots upon all the lines in the country is considerable. The inconsistencies in the treatment of such shipments by different carriers under different classifications, and frequently by the same carrier where different classifications are used for different destinations, have been a source of constant annoyance to the community, and have constituted one of the little things the multiplication of which has tended to create and intensify a feeling of irritation on the part of the public against railroads and their managers. It is excessively annoying for a shipper who has made up a car-load lot in the expectation of receiving a car-load rate to find that a few more dollars are exacted because the rule in force on some connecting road prohibits the car-load rate in case more than one kind of articles are embraced in the shipment, although no substantial increased expense to the carriers is involved; and it is still more annoying to find that a rate apparently shown by the tariff sheets of the carrier at the shipping point is not sufficient to obtain the delivery of the goods at destination; or, on the other hand, that he might have obtained a lower rate if he had been fully apprised of the diversities prevailing in different sections or in respect to different consignments.

This whole matter is in a state of elaborate and unjustifiable confusion. It should be taken up at once by the various traffic managers and associations controlling classification in different parts of the country and a common rule immediately established. Such a rule, in order to be satisfactory and just, should be precisely fair as between the shipper and the carrier, easily comprehended in its terms, reasonable in its nature, and applicable throughout every shipment without change.

The carriers of the whole country are interested and would be entitled to be heard, either generally or through their associations, before the Commission could safely make such an order as would meet the case; at the present time, therefore,

the Commission only recommends the immediate adoption of some uniform classification rule which shall definitely control the question of mixed car-load shipments.

*Second—Different Classification of Raisins and Dried Fruit.*  
—Continuing the statement of facts in reference to the case in hand, it should be further noted that a comparison of the classifications shows that in the Western Classification, in force on business from the Pacific Coast to all points west of the Missouri river, raisins are classed higher than dried fruits, while in the Pacific Coast East Bound Classification, in force on business from the Pacific coast to the Missouri river and common points, St. Louis and common points, Chicago and common points, New York and common points, etc., California raisins in car-load lots are found in the same class with dried fruits in car-loads.

These diversities involved the subject in confusion, as understood by complainants and presented in their proofs. It is a source of infinite misunderstanding that classifications so widely different as the two last above named should be employed on business from the same points, in the same direction, over the same lines. Separate tariffs are issued for the business conducted under these classifications; the tariff subject to the Western Classification reading "Joint Through Tariff between San Francisco, Sacramento," and other Pacific coast points, "and all points on the Union Pacific system east of Ogden in Utah, Wyoming, Nebraska, Kansas; and all points on the Denver Pacific and Kansas Division in Colorado; and all points on the St. Joseph and Grand Island railroad."

Any person having in his hands this tariff would understand that it was applicable as well to Omaha, Atchison, Leavenworth, and Kansas City, as to Denver; but in fact another tariff is used on the business from the same Pacific points to points on the Missouri river, which is subject to the Pacific Coast East Bound Classification; and this is true although the Pacific Coast East Bound Classification contains upon its face a statement of the roads which employ it "in connection with the eastern lines," apparently excluding

the idea that it is used on business to the eastern terminals of the roads in question.

It is not surprising, under these circumstances, that complainants failed to obtain an accurate understanding of the rates to Missouri river points for comparison with the rates to Denver.

In the Western Classification Dried Fruits are rated L. C. L. Class 3, C. L. Class 4; while in the Pacific Coast East Bound Classification the same articles are rated L. C. L. Class 5, C. L. Class 7. Raisins, in the Western Classification, stand L. C. L. Class 2, C. L. Class 3; while in the Pacific Coast East Bound Classification they stand L. C. L. Class 4, C. L. Class 7.

One effect of applying the Western Classification to this article is to impose a car-load rate on raisins higher than is charged on dried fruits. In the Pacific Coast East Bound Classification raisins in car-loads are in the same class with dried fruits in car-loads. In less than car-loads the classification of raisins is higher than that of dried fruits in both cases.

It appears from the evidence that the value of California raisins is quite uniformly less than the value of the article sold as California dried fruits. Complainants testify that no distinction in classification between California raisins and dried fruit was enforced on shipments to Denver previous to April 5, 1887. No reason is apparent why the dried fruits of California should not be construed to embrace raisins, except the fact that the classification has the word "Raisins" in another place. This interpretation would have entitled the complainants to a car-load rate in Class 4 of \$1.95 on 20,925 lbs.—\$408.03.

These irregularities and inconsistencies are not reasonable. In all matters of classification the influence of the Commission will be cast in the direction of clearness and simplicity. Instead of seeking for reasons justifying the existing confusion, persistent efforts should be made to efface it. It is of little consequence how such complications arose. The present question is, what is now reasonable and just in view of

the principles established in the Act to regulate commerce. Whatever is not so should be corrected as speedily as is practicable.

In the present case the rating of the same kind of commodities in different classes works an injustice which needs only be stated to be seen. Dried grapes are certainly dried fruit, equally with dried peaches, plums, or apricots; their value, as above shown, is less; and the word "raisins" in the Western Classification (very likely in the first instance applied to the shipments west from Chicago of the imported "raisins" of Europe), has the effect here to impose a burden which is not supported upon any reason adduced in the proofs, and which the East Bound Classification for through business, deliberately adopted by the same carriers, does not impose.

*Third—Intermediate Rates Exceeding Rates to Terminus and Return.*—Returning again to the complainant's statement of complaint, they allege that the rates from San Francisco to Denver are greater than the rates from San Francisco to the Missouri river and back again to Denver, by means of which discrimination they aver that they have been driven out of the market in the vicinity of their own home. They introduced evidence in support of this allegation, which they evidently believed to be true. This evidence need not be stated in detail, for the reason that it was founded upon a natural confusion growing out of the application of different classifications to the rates in the tariff sheets. It is sufficient to say that the Commission does not find the fact to be as alleged; but, on the contrary, it appears from a careful examination of all the tariffs, classifications, rules, and circulars in force upon the lines in question that in no case does the rate charged to or from any local station now exceed the rate which would be made by adding the rate to or from the nearest terminal point to the local from such terminal point to the station in question.

It is proper to add that this subject also is one which was

taken up by the Commission on its own motion in June, 1887. As the rate sheets were then applied by the defendants, cases existed of the nature here in question. The Commission brought an example of this kind to the attention of the officials of the roads and inquired whether there was any valid reason why a general rule should not be established in cases where the charge for the long haul is less than the charge for the short haul, providing that the local rate should never exceed the through rate with the local back from the terminus. The traffic managers of the roads in question gave assurances that a general rule of this nature should be established, and expressed their entire willingness to unite therein, and this result has been effected by the issuance of directions to agents making the principle imperative. The language of the circular issued by the Union Pacific Railway Company is as follows :

“To agents: Announce to shippers that through rates between your station and Pacific Coast common points will in no case exceed the current rates between such Pacific Coast common points and the Missouri river plus the local rate between your station and the Missouri river.”

In the correspondence respecting this matter, which was considerable and which resulted in very material reductions from the original tariff rates at points between Denver and the Missouri river and between Elko and San Francisco, the Commission was exceedingly careful to disclaim the expression of any opinion upon the question of whether a greater sum could in any case be properly charged for a shorter distance than for a longer upon the trans-continental lines.

The purpose in view was simply the immediate correction of a glaring injustice which enabled an intelligent shipper by a combination of rates to obtain an advantage over one who had less information, but who relied upon the published tariff alone, thus practically making two different rates at the same time to and from the same point in direct contravention of the Act to regulate commerce. This was so obvi-

ously illegal that the Commission has insisted upon its correction forthwith, not only upon the defendant roads, but wherever it was found to exist, without reference to the underlying question of whether the rates so obtained could be justified under the rule of the fourth section and pending a more careful examination of the general subject which the Commission has had in hand.

*Fourth—Section 4 of the Act—Long and Short Haul Clause.*—The remaining question in the case, and one which is of very grave importance, is the consideration of whether a tariff of rates from San Francisco to Denver higher than the rates charged at the same time from San Francisco to Kansas City is justifiable under the fourth section of the Act to regulate commerce. Upon this question the Commission has as yet expressed no opinion whatever, except as the subject is incidentally discussed in the opinion filed June 15, 1887, in the matter of the application of the Louisville and Nashville Railroad Company for relief under section 4 of the Act to regulate commerce.

The rates in force from the Pacific Coast August 9, 1887, were as follows :

	TO MISSOURI RIVER.				TO DENVER.			
	L. C. L.		C. L.		L. C. L.		C. L.	
	Class.	Rate.	Class.	Rate.	Class.	Rate.	Class.	Rate.
Dried Fruit...	5	1.40	7	1.05	3	2.30	4	1.95
Raisins.....	4	1.50	7	1.05	2	2.65	3	2.30

It is obvious that the question presented in this naked form involves the entire subject of relative rates as between shorter and longer hauls on all the trans-continental lines ; it was so presented by the parties and must be so considered by the Commission.

A brief historical statement is necessary to an understanding of the subject. Ever since the opening of the first trans-continental line it has been customary to make higher rates at intermediate points than at the terminals, the through business having been treated as competitive and the long

distance rates being subject to considerable fluctuation. The competition, which at the outset, on the traffic from the Pacific to the Atlantic Coast, was with the Pacific Mail Steamship Company *via* Panama and with clipper ships around Cape Horn, was afterwards more active among the various railroads themselves as they were successively constructed. But while each road entered into this competition in making rates for through traffic, they also quite consistently maintained, each for itself, the local rates to points served only by its own line. The opening of the Union Pacific Railway, the Southern Pacific Railway, the Atchison, Topeka and Santa Fe, and the Denver and Rio Grande to Ogden, successively afforded new routes from the Pacific Coast to the city of Denver, and competition was entered into among these lines for business to that point and other common points in its vicinity, as well as to the more distant points on the Missouri river and beyond. The result was that for some two years or more prior to the enactment of the Act to regulate commerce the rates from San Francisco to Denver were placed on a competitive basis by all the lines; for example, dried fruits and raisins were carried for \$1.30 per hundred, as stated above; the rates named upon the tariff sheets were treated as merely nominal rates, from which rebates were allowed and drawbacks given as seemed necessary to obtain the business. A trans-continental association was at one time formed among the various lines with the object, among other things, of maintaining rates upon a uniform and more profitable basis, but it was not successful, and it finally went to pieces in February, 1886. From that time forward what is known as a "war of rates" was carried on among the various trans-continental lines in respect to all competitive business. This was conducted with considerable bitterness and involved the continual use of secret rates, rebates, drawbacks, underbilling, and devices of various kinds by which business was taken from one to another as opportunity offered.

An effort was made to put an end to this confusion in the fall of 1886, but without any very substantial success, and the "war" continued until about the time of the taking effect of the Act to regulate commerce. The rates which were



made on long distance business during this period were very low, and to a considerable extent, unremunerative. There can be no doubt that a great deal of business was hauled at an absolute loss to the carriers; in fact it appears that very little regard was paid to the price obtained, tonnage being the object principally aimed at in respect to competitive freight.

Meanwhile the rates at intermediate points did not participate in these reductions, and the complaint was, in many instances, undoubtedly just, that shippers to and from the local stations were obliged in some measure to compensate the carrier for loss sustained on business carried by their doors at greatly lower rates for longer distances.

Under the influence of the passage of the Act to regulate commerce, approved February 4, 1887, the trans-continental lines consulted with one another and agreed upon a general system upon which their tariffs should be constructed in compliance with the provisions of the new law. The opinion was entertained by the managers of some of the roads that Section 4 of the Act did not prohibit a greater charge for a shorter distance over the same line, in the same direction, when the circumstances and conditions were dissimilar, and that the competitive circumstances controlling the business of the long-distance traffic were such as to constitute dissimilar circumstances and conditions under the language of the section. This view did not universally obtain, the managers of some of the lines being unwilling to take the responsibility of so construing the section, and tariffs were prepared, published, and issued on April 5, 1887, contemporaneously with the taking effect of the law, under which the language of section 4 was literally applied upon all trans-continental business. Under these tariffs, which were all *subject to the Western Classification*, the rates to Missouri River common points, St. Paul, Minneapolis, Galveston, and Houston were as follows:

Class.	1	2	3	4	5	A	B	C	D	E
	4.00	3.50	3.00	2.50	2.25	2.10	1.75	1.40	1.10	1.00

The rates to Mississippi River common points, Chicago com-



mon points, and New York common points were progressively higher than the above. The rates named above for Missouri River common points were applied for about 350 miles west of the river, from which point they gradually decreased to Denver. The Denver rates were as follows:

Class...	1	2	3	4	5	A	B	C	D	E
	3.00	2.65	2.30	1.95	1.70	1.50	1.20	.95	.85	.80

And were applied from Denver to a point near Green River, over 300 miles west from Cheyenne. From Green River the rates again diminished very gradually to the Pacific Coast.

The result of the enforcement of the aforesaid previously unknown rates from the Pacific to the Missouri river and points beyond, was what the carriers expected, and perhaps desired. The tariff for this long-distance business was regarded by shippers as prohibitory. Shipments ceased, and the Interstate Commerce Commission was at once importuned, by telegrams, letters and petitions from a large variety of business interests on the Pacific slope, to interfere for their relief. Applications were also filed by the carriers with the Commission for relief upon this traffic from the operation of the fourth section under what was understood to be the power conferred in the proviso attached to the aforesaid section. These matters were brought to the attention of the Commission immediately after its organization in connection with many other similar applications from other portions of the country. The course pursued by the Commission is stated in its first annual report. For the reasons and upon the considerations therein set forth,

“The Commission, after having made sufficient investigation into the facts of each case to satisfy itself that a *prima facie* case for its intervention existed, made orders for relief under the fourth section where such relief was believed to be most imperative. These orders were temporary in their terms,”

and were expressed to be in force for a given number of days,

“until the Commission can make a complete examination of the matters alleged.”

An order of this nature was made on the application of the Southern Pacific Company, dated April 23, 1887, by which said company was relieved from the operation of Section IV of said Act for a period not greater than seventy-five days, upon the following traffic, to wit:

“1st. Between San Francisco, Sacramento, Stockton, Marysville, San Jose, Oakland, Los Angeles, and San Diego, in California; Portland and Astoria, in Oregon; Tacoma, in Washington Territory; Victoria in British Columbia, and El Paso, in Texas, on the one hand, and New York, Boston, Philadelphia, Baltimore, Newport News, Richmond, and all points commonly rated with them or either of them, on the other hand.

“2d. Between the same western points and Chicago, St. Louis, Memphis, New Orleans, and points east thereof.

“3d. Between the same western points and El Paso, Galveston, and Houston, in Texas, and points on the Missouri river and east thereof.”

This order was subject to the restriction that the rates at intermediate stations should not be raised from the rates in force prior to April 20th.

Similar orders were made upon the application of the other trans-continental lines, limited in like manner to traffic between the Pacific Coast on the one hand and the Missouri river and points beyond on the other. All of said orders expired early in July, 1887.

The subject of the application of the fourth section to the business of the trans-continental lines was quite fully investigated by the Commission, in connection with their general examination of the short-haul question during the ninety days first ensuing its organization.

Immediately upon the issuing of the aforesaid temporary order the defendant carriers announced a tariff to take effect

April 27, 1887, under the *Pacific Coast East-Bound Classification*, which established a line of rates from \$3.50 on the first class to 85 cents on the ninth from San Francisco to the Missouri river. These rates, on May 25, 1887, were further materially reduced, and as so established remained in force on August 1, to wit:

Class...	1	2	3	4	5	6	7	8	9
	2.80	2.24	1.75	1.50	1.40	1.23	1.05	.88	.70

Meanwhile no substantial change was made during the year 1887 in respect to the tariffs established April 5 for all intermediate points between the Pacific Coast and the Missouri river; the only important modification being that which was effected under the circulars mentioned above which operated to give shippers residing in the vicinity of the Missouri river and of the Pacific Coast the benefit upon direct shipments of the right which they had to ship to the terminal and return over the same ground.

The reduction to the rate which was established for through business on April 27 was made by the carriers with full knowledge of all existing water competition, the facts concerning which were laid before the Commission at that time with great detail. In justification of the subsequent reduction on through business which took effect May 25, 1887, the carriers pointed to the competition of the Canadian Pacific railway, which was practically a new factor in the situation, and which became energetic and active in the spring of 1887, contemporaneously with the taking effect of the Act to regulate commerce. A new line was thus opened, running for sixteen hundred miles or more through a foreign country, which competed on the streets of San Francisco for business from the Pacific Coast to the Missouri river, Chicago, New York and Boston. This competition was so managed as to make itself felt successively upon one commodity and another and at various points, forming a continual menace to the through business of the trans-continental lines in both directions, without undertaking the carriage of any very considerable amount of tonnage, except at the outset, when large consignments of sugar were shipped east for a few weeks over the Canadian line.

A steamer of the Pacific Coast Steamship Company left San Francisco weekly for Vancouver, where its freight was loaded upon the cars of the Canadian Pacific Company and taken east across the mountains to be delivered *via* St. Paul or *via* more eastern routes, according to its destination. The rates of freight established for each sailing of these steamers have been regularly filed with the Commission; and the Commission has also obtained accurate information respecting the amount and destination of all goods shipped in each steamer sailing from San Francisco to Vancouver between April 1st and December 31st, 1887. The shipments of May 13th and May 21st were each a little over one thousand tons; the average of the thirty-four remaining shipments was about 150 tons each. The goods carried by this route to strictly Missouri River points were, 944 tons of refined sugar (900 tons of which were carried on May 13), 7 car-loads of beans, 2 car-loads of dried fruit, 4 car-loads of canned fruit, and 1 car-load of bags. These articles were taken at rates lower than the rates in force at the time on the defendant roads. The Canadian Pacific rate on dried fruit to Chicago was at different times ninety cents and one dollar.

It does not appear that the Canadian Pacific line charged a less rate to St. Paul and other points in the United States near the northern boundary than it charged to Omaha, Kansas City, Chicago, New York, and other more distant points in the United States on the same line in the same direction. It is not known, however, that any limitation exists upon the said line in respect to charging any desired rate to and from intermediate points in the Dominion of Canada, without reference to the rates established at more distant points, either in Canada or in the United States; and higher rates to and from intermediate points are in fact there charged. Nor does it appear that the Canadian business of this carrier is subject to any statutory prohibition of rebates, drawbacks, or other forms of unjust discrimination, or to any restrictions in respect to preferences between persons or localities. So far as appears, its Canadian rates may be changed at will and be varied from at pleasure. A general revision of railway laws now pending in the Canadian Parliament, introduced pursu-

ant to the report of a Commission which has given much consideration to the question, provides as follows:

“No company in fixing any toll or rate shall, under like conditions and circumstances, make any unjust or partial discrimination between different localities, but no discrimination between localities which, by reason of competition by water or railway, it is necessary to make to secure traffic, shall be deemed to be unjust or partial.”

The policy of the Canadian Pacific Company during the period following the taking effect in the United States of the Act to regulate commerce was to maintain its rates between San Francisco and the Central and Eastern States, upon leading articles, a little below the rates made by the trans-continental lines in this country; this was designed to compel the recognition by the latter of the general principle which it asserted, that rates upon a circuitous line between like terminals should be lower than rates upon the direct line, in order to enable the longer route to obtain a certain portion of the traffic. In other words, that natural disadvantages, operating to the prejudice of a route competing for the business in question, should be compensated by the privilege of offering to the public a lower rate.

And that policy was pursued with sufficient energy to produce at last the effect desired. On January 16, 1888, an arrangement was made by which the Canadian Pacific Railway became a member of the Trans-Continental Association. The trans-continental lines, including the Canadian Pacific, are now working under a tariff which fixes rates from Pacific Coast points to Missouri River common points and easterly to New York, that are considerably advanced from the low rates which prevailed after May 25th, 1887. The new tariff provides that on rates from San Francisco to Chicago and the East, *via* the Canadian Pacific Railway, certain differentials are to be deducted amounting to a reduction of from five to ten per cent in favor of the Canadian road. No differentials are given that line on shipments to and from the Missouri river; the result of which is that business from the

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Pacific Coast to Missouri River points is not now competed for by the Canadian road.

The competition of the Canadian Pacific Railway, a foreign railroad not subject to the provisions of the Act to regulate commerce is the only justification relied upon by the defendants for charging higher rates at intermediate points in the case now under consideration.

The foregoing facts present the following question: Under the circumstances and conditions stated, is a higher rate justifiable for the shorter haul from San Francisco and Pacific Coast common points to Green River, Cheyenne, Denver, and common points, than for the longer haul to Kansas City, Omaha and other Missouri River points?

Before proceeding to the consideration of this question it is important to obtain exact knowledge of just what disparity now exists between the rates in question, and how it is practically effected.

It appears from the proofs, and from the files in the office of the Commission, that the rates in force August 9th, 1887, from San Francisco to Denver, upon the ten classes of the Western Classification, were as follows:

Class...	1	2	3	4	5	A	B	C	D	E
	3.00	2.65	2.30	1.95	1.70	1.50	1.20	.95	.85	.80

It also appears that the rates in force at the same time from San Francisco to the Missouri River, upon the nine classes of the Pacific Coast East-Bound Classification, were as follows:

Class...	1	2	3	4	5	6	7	8	9
	2.80	2.24	1.75	1.50	1.40	1.23	1.05	.88	.70

It further appears that the class rates from the Pacific Coast to Denver, under the Western Classification, since February 14, 1888, are as follows:

Class...	1	2	3	4	5	A	B	C	D	E
	3.00	2.60	1.90	1.55	1.30	1.40	1.20	.95	.85	.80

And that the class rates put in effect January 16, 1888,

from San Francisco to Missouri River points, under the Pacific Coast East-Bound Classification, are as follows:

Class...	1	2	3	4	5	6	7	8	9
	3.00	2.40	1.90	1.65	1.55	1.40	1.25	1.10	1.00

It would at first appear from a comparison of the foregoing tables that the rule of the fourth section had now been substantially put in force; and that, excepting in Class 2, no greater charge is at the present time made from the Pacific Coast to the Missouri river than to Denver.

Such a comparison, however, does not exhibit the true situation, for the reason that the classifications are not the same.

The Pacific Coast East-Bound Classification, which is applied only upon long-distance freight, to the Missouri river and beyond, was evidently prepared for the purpose of facilitating a free and cheap movement of California products to competing centers of trade in the East. The Western Classification, under which all the local business of the trans-continental lines is handled, is in many instances higher. Special or commodity rates have also been customary on many articles, which are thereby taken out of the classification altogether.

It is apparent that the use by the carriers in question of different classifications, when the effect is to increase their revenue from their local traffic as compared with that obtained from through traffic, accomplishes a violation of the fourth section of the Act to regulate commerce no less potent in its results than would be the imposition of a higher tariff upon the same class in the same classification, and not less unlawful.

Since the hearing of this case the through rates have been increased from the exceedingly low competitive rates which prevailed in the summer of 1887, as above shown, the tariff of January 16, 1888, being united in by the Canadian Pacific as well as by the lines in the United States.

An East Bound Through Freight Tariff, taking effect March 10, 1888, had the effect still further to reduce the dis-



parity upon many important articles of traffic. Meanwhile the rates to Denver and its common points, on classes 2, 3, 4, 5, and A, were reduced, as above shown. The Joint Freight Tariff, San Francisco to Denver, in effect February 14, 1888, also names a commodity rate on "Fruit, dried, and Raisins, straight or mixed." Applying the present tariffs to the articles here in question, and we have the following result :

	To Missouri River.		To Denver.	
	L. C. L.	C. L.	L. C. L.	C. L.
Dried Fruit.....	1.55	1.25	1.85	1.50
Raisins.....	1.65	1.25	1.85	1.50

The shipment in question at the present Denver rate would have cost \$313.87.

The tariffs now in effect have been examined by the Commission with much care. It is found that on many articles the rates from the Pacific coast to Denver are no greater than to points further east. The differences which remain are principally the result of different classifications. In fact, the subject of classification lies at the foundation of any attempt to place the through and local business of the trans-continental lines upon a relatively just and intelligible basis. Nothing in the nature of a stated proportion can at present be discovered. The matter is now in a state of crystalization among the carriers themselves. The changes that have been made within the past three months in the way of equalization of tariffs and doing away with differences that have long been maintained against interior points, are very noteworthy. So long as the carriers are actively engaged in a re-arrangement of the tariffs and classifications, and while the changes made are in the direction of conformity to the law, it is better that the details of the matter be not interfered with by the Commission. There are many factors in the situation which are obviously uncertain. The subject must be dealt with as somewhat experimental. It is not yet known that the present through rates can be maintained with a reasonable certainty of permanence, although the situation supports



the belief that they may be. The effect of the changes that are being made upon the revenues of the carriers has not yet been ascertained. Radical measures taken suddenly might produce unforeseen disasters.

As the matter now stands, however, and while Canadian competition does not seek to participate in the Missouri river business, it is impossible for the Commission to discover any adequate ground upon which the defendants can claim that the circumstances and conditions of the traffic from San Francisco to Denver are so materially different from those of the traffic from San Francisco to the Missouri river as to warrant them in charging a greater sum for the shorter distance.

The distance from San Francisco to Kansas City is 2,098 miles, to Denver 1,455 miles—a difference of 543 miles, or more than one-fourth of the entire haul in favor of Denver.

Whatever may be thought of the situation as a theoretical question, or in view of the laws or customs of other countries, the will of the supreme law-making authority of this country has been distinctly stated in the 4th section of the Act to regulate commerce, and no valid reason now appears to prevent the rule of the statute being enforced in respect to the traffic in question.

In reaching this result no modification is intended in respect to the construction of the statute which was announced in the case *In re Louisville and Nashville Railroad Company* (1 I. C. C. R., 31). The Commission as yet has found no reason to change the rules there laid down, and this decision is in strict conformity therewith.

The long-distance rates in question from the Pacific coast to Missouri river points are not now subject to "actual competition of controlling force in respect to traffic important in amount" engaged in by Canadian roads which are not subject to the provisions of our statute. On the contrary, the Canadian Pacific has retired from such Missouri river business as it at one time undertook to compete for, and the through rates of the roads in the United States have accordingly been substantially advanced.

The great distance of Denver from the Missouri river of itself denotes an obvious impropriety in the charges to that point which exceeds those to Kansas City. The longer haul exceeds the shorter in the given case by several hundred miles.

No fact is shown to exist upon which the greater charge for the shorter haul in the case stated can be justified at the present time.

The Commission, at more recent hearings involving questions to some extent though not altogether similar, has been informed that the traffic managers of the defendant roads are now engaged in considering a general re-construction of their tariffs and classifications, in view, among other things, of the higher rates now obtained upon through business, and in the light of suggestions informally made by the Commission upon various matters of detail. A reasonable time should be allowed for the completion of the work, which is necessarily complicated, and which involves much correspondence and conference. Believing that an effort is being made in good faith to re-adjust the local tariffs of the trans-continental lines, and to simplify and combine the classifications in use upon through and local business in accordance with the requirements of the law and the views of the Commission, it is considered best to leave the matter for the present in the hands of the carriers, and allow an opportunity for them to complete the work in which they are engaged.

No order, therefore, will be entered in this case for a period of sixty days from this date, and further proceedings are for the present suspended.

**EUCLID MARTIN AND OTHERS, CONSTITUTING THE FREIGHT BUREAU OF THE OMAHA BOARD OF TRADE, v. THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, THE CHICAGO AND NORTH-WESTERN RAILROAD COMPANY, THE UNION PACIFIC RAILROAD COMPANY, THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD COMPANY, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, AND THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA.**

Heard March 19, 1888.—Decided June 19, 1888.

The principles laid down in the case of *Crews v. The Richmond & Danville Railroad Company*, 1 Interstate Commerce Commission Reports, 401, re-stated and re-affirmed.

Trade centers or large commercial towns are not as a matter of right entitled to have more favorable rates than the smaller towns for which they form distributing centers; and if carriers shall give to such smaller towns rates as favorable as to the larger, the Commission will not interfere.

The fact that under rates which are impartially arranged as between large and small towns one large distributing center may have an advantage over another in competition for the business of the small towns, does not make out a case of undue preference in favor of the one distributing center as against the other. Impartial rates are not rendered illegal by their effect upon the business of localities.

A distributing center, however great or important, cannot demand as a matter of right that the rates from a common source of supply to more distant and smaller towns shall be made up of the sum of the rate to itself and the rate thence to such smaller towns; but the carriers may make rates from the common source of supply to the smaller towns directly, as single rates; and if the single rate is less than the sum of the two which are made to and from the distributing center, it is not for that reason necessarily objectionable.

A case cannot be decided on a theory which is neither presented by the complaint nor advanced on the taking of the testimony.

What constitutes local and what through rates considered.

*J. M. Woolworth* and *W. F. Griffiths*, for complainants.

*J. M. Thurston*, for Union Pacific Railway Company.

*W. C. Goudy*, for Chicago and North-Western Railway Company.

defendant companies from Chicago to Omaha at the same time, upon the same classes of merchandise, are as follows : 1st class, .75 ; 2d, .60 ; 3d, 40 ; 4th, 30 ; 5th, 25.

It is further averred that the rates charged by the Union Pacific Railway Company from Omaha to the points named are at the same time as follows :

CLASSES—	1.	2.	3.	4.	5.
To Elkhorn.....	.19	.17	.16	.12	.10
Wahoo.....	.26	.24	.22	.19	.15
Lincoln.....	.33	.28	.23	.19	.15
Beatrice.....	.50	.40	.35	.25	.20
Fremont.....	.26	.24	.22	.19	.14
Blue Springs.....	.50	.40	.35	.25	.20
Cedar Rapids.....	.62	.54	.49	.40	.35
Hastings.....	.54	.48	.42	.40	.34
Buda.....	.65	.60	.50	.45	.39
Sidney.....	1.25	1.18	1.08	.91	.81
Kimball.....	1.50	1.31	1.21	.98	.90

And, further, that the differences between the rates per ton from Chicago to the interior Nebraska points named and the rates from Chicago *plus* the rates from Omaha to said Nebraska points are as follows :

CLASSES—	1.	2.	3.	4.	5.
To Elkhorn.....	2.80	2.40	2.20	1.80	1.20
Wahoo.....	4.20	3.80	3.60	3.00	2.40
Lincoln.....	5.60	4.60	3.80	3.00	2.40
Beatrice.....	6.00	3.80	3.60	1.40	1.40
Fremont.....	4.20	3.80	3.60	3.00	2.20
Blue Springs.....	6.00	3.80	3.60	1.40	1.40
Cedar Rapids.....	.....	.....	.....	.....	.20
Hastings.....	2.80	1.00	2.00	3.40	2.60
Buda.....	2.00	.60	.....	2.00	1.80
Sidney.....	.....	.....	.....	.....	.20
Kimball.....	.....	.....	1.20	.60	2.00

It is further represented that the Chicago, Burlington and Quincy Railroad Company has, conjointly with the Burlington and Missouri River Railroad Company, established rates from Chicago to thirty-five named points in Nebraska located on the Burlington and Missouri River Railroad, and that the differences expressed in rates per ton between those rates and the rates from Chicago to Omaha *plus* the rates from

Omaha to said Nebraska points by way of said Burlington and Missouri railroad as shown by its local freight tariff, are as follows to the points named, which are some of the thirty-five mentioned :

CLASSES—	1.	2.	3.	4.	5.
To Lincoln.....	5.60	4.60	3.80	3.00	2.40
Hastings.....	2.80	1.00	2.00	3.40	2.80
Wahoo.....	4.20	3.80	3.60	3.00	2.40
Beatrice.....	6.00	3.80	3.60	1.40	1.40
Blue Springs.....	6.00	3.80	3.60	1.40	1.40
Hebron.....	2.80	1.00	2.40	3.60	3.40

Upon this showing the complainants charge :

1. That the defendant companies “are now actually violating the Interstate Commerce law, inasmuch as they have authorized and are now using freight tariffs from Chicago to interior Nebraska points, which tariffs are heavily discriminating against the city of Omaha and as heavily discriminating in favor of the city of Chicago, to our great detriment and disadvantage, and which discrimination we respectfully submit is made unlawful by the terms of the third section of the law. \* \* \*

“2. That the city of Omaha is unlawfully discriminated against, and is subjected to undue and unreasonable prejudice and disadvantage within the meaning of the third section of the Interstate Commerce law.

“3. That by reason of freight tariffs thus arranged and in effect the city of Chicago is largely benefited to our detriment—a condition clearly forbidden, not only by the general tenor of the law, but involving a distinct violation of its third section.”

And the complainants pray that the Commission “will so order that freight tariffs between the city of Chicago and all interior Nebraska points be hereafter constructed on a basis that shall give the city of Omaha an equal chance with Chicago as a market and distributing point for west-bound traffic for the state of Nebraska.”

The defendants answered the amended complaint as follows :

defendant companies from Chicago to Omaha at the same time, upon the same classes of merchandise, are as follows : 1st class, .75 ; 2d, .60 ; 3d, 40 ; 4th, 30 ; 5th, 25.

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And the complainants pray that the Commission “will so order that freight tariffs between the city of Chicago and all interior Nebraska points be hereafter constructed on a basis that shall give the city of Omaha an equal chance with Chicago as a market and distributing point for west-bound traffic for the state of Nebraska.”

The defendants answered the amended complaint as follows :

The Chicago, Burlington and Quincy Railroad Company and the Burlington and Missouri River Railroad Company in Nebraska, answering jointly, deny that said rates effect any unlawful discrimination in favor of Chicago or against Omaha, or that they are contrary to the letter or spirit of the third section of the Act to regulate commerce, and they aver that the rates between Chicago and Omaha and between Chicago and interior Nebraska points are just, reasonable, non-discriminating, and in accordance with the letter and spirit of said act.

The Chicago and North-Western Railway Company avers that the rates are lawful and reasonable ; denies that Omaha is thereby unlawfully discriminated against or subjected to undue and unreasonable prejudice and disadvantage, and avers that the freight carried by it to the several points mentioned in the complaint is so carried without going through Omaha, and that Omaha is on a different line from that on which the business is conducted to the other points named in Nebraska. It avers further that "there is a contest between the business men of the city of Omaha and those of the city of Lincoln, each claiming to be the distributing point for the State of Nebraska and each demanding more favorable rates from the carriers than those allowed to the other ; but this respondent avers that the rates established by the tariffs now in force are in every respect reasonable and just." The answer also raises the question of the competency of complainants as an unincorporated body to institute the proceeding.

The Chicago, Milwaukee and St. Paul Railway Company answered the original petition only, but when the amended petition was filed elected to stand upon the answer instead of filing another.

The answer claimed that defendant has the shortest line of railroad from Chicago to Omaha ; that it has nothing to do with the making of rates from Omaha to the five Nebraska points named in the original petition, but accepts the rates made by connecting lines ; that the Chicago, Burlington and Quincy is the shortest line from Chicago to Lincoln, and by that line the distance from Chicago to Lincoln is 549 miles,



which is but 41 miles greater than the distance from Chicago to Omaha by the same line; "that the distance from Chicago to Omaha by this respondent's railway and the Union Pacific is 490 miles; to Wahoo, 519 miles; to Fremont, 537 miles; to Lincoln, 558 miles; to Beatrice, 623 miles, and to Blue Springs, 637 miles; that the distance from Chicago to Omaha is 95 per cent. of the whole distance from Chicago to Wahoo by the line of this respondent and the Union Pacific, and more than 90 per cent. of the whole distance from Chicago to Fremont by the same route, and nearly 90 per cent. of the entire distance from Chicago to Lincoln, about 80 per cent. of the entire distance from Chicago to Beatrice, and 78 per cent. of the entire distance from Chicago to Blue Springs; that said distance from Chicago to Omaha is also 90 per cent. of the entire distance from Chicago to Lincoln by way of the Chicago, Burlington and Quincy; that the tariff of freight charged by the respondent from Chicago to Omaha is only 90 per cent. of the rate charged from Chicago to Lincoln, Wahoo, and Fremont, and 79 per cent. of the rate charged from Chicago to Beatrice and Blue Springs on first-class freight, and on all other classes of freight named in said complaint the rate from Chicago to Fremont and the other points named is less than that percentage. A division of the rates charged, as stated in the complaint, from Chicago to the points in Nebraska west of Omaha, on a strictly mileage basis, would give a higher rate than is now charged to Omaha on shipments to each of the places named except Blue Springs, and the proportion to Omaha on shipments to that point would amount to nearly 90 cents on first-class freight."

The answer further says that "the complaint does not state that the rates to Omaha are too high, but complains that the rates to points beyond Omaha are too low, and asks that the several respondents shall be restrained and compelled to withdraw the freight tariffs in reference to points west of Omaha, and substitute therefor such freight tariffs from Chicago to the Nebraska points in question as shall be just and equitable to the reasonable demand of the city of Omaha to be considered as the chief distributing point for

Nebraska, and substantially asks to have rates to all points west of Omaha increased; but this respondent respectfully shows that the rates now in force are not in any respect in violation of any provision of the Interstate Commerce Act, and that they are substantially upon a mileage basis, and that it is not competent for railway companies under said act to so arrange their tariffs as to make any particular city or point the chief distributing city or center for the freight of any particular State, and that no such practice can be recognized or enter into the making of tariffs under the Interstate Commerce Act."

The answer of the Chicago, Rock Island and Pacific Railway Company avers the rates complained of to be just, and denies any unjust or unlawful discrimination or preference.

The answer of the Union Pacific Railway Company denies responsibility for rates east of Omaha, justifies the rates actually made by it, and avers them to be just, reasonable, and non-discriminating.

On issues thus made the case was brought to a hearing at Omaha, March 19, 1888, and was submitted on testimony given and arguments made in open sessions. The testimony was not voluminous, and was directed in the main to showing that the rates complained of operated injuriously to the business interests of Omaha.

W. A. L. Gibbon, wholesale dealer for three years in iron, steel, and hardware, testified that the rates had a very injurious effect on the wholesale business of Omaha. His house had been compelled to give up the trade in a great many towns where they formerly did business because they could no longer do business there except at a sacrifice of their profits. He gave an instance of an order for a car-load of iron from Fremont. But the freight from Chicago to Omaha was 30 cents, and from Omaha to Fremont 19 cents, while from Chicago to Fremont it was 35 cents. The figure he made on the iron was 12 cents higher than was offered at Chicago, and the Chicago dealer got the trade. He gave another instance of a sale at Lincoln, which he was only enabled to make by having the goods shipped directly from the

mill, though he had the same goods in stock and should have preferred to ship from Omaha. The witness testified how rates were customarily made, as follows :

“ We purchased goods in Boston, New York, Troy, Philadelphia, Pittsburgh, Johnstown, Pennsylvania ; Youngstown, Ohio ; Cleveland, and other places. These are the principal towns that we buy our goods at. The manufacturers would sell goods sometimes at the mill, sometimes delivered at Chicago, and sometimes in Omaha. We bought in these ways, and of course became familiar with the rates from these points, both to Chicago and Omaha. With very few exceptions the through rate was the sum of the two local rates—that is, the rate from the mills to Omaha was the sum of the rate from the mills to Chicago and the rate from Chicago here. That was the universal rule and is.”

In answer to a question, What it is precisely which the people of Omaha demand? the witness said :

“ The only rule we advance is that the rates between competing trade centers should be made nearly, if not exactly, upon the basis of the sum of the two locals. We don't care anything about the locals purely, as that is a private matter for the railroad companies to adjust. But this rule that we want is the one that covers shipments from the Atlantic seaboard to the Missouri river. We want that same rule here.”

Further on the following proceedings took place :

“ By Mr. THURSTON :

“ Q. Mr. Gibbon, are you Omaha people willing to have the same rule applied, which you now contend for, to shipments made from Omaha, Lincoln, and Fremont to points common to all ?

“ A. Yes, sir ; unquestionably.

“ Q. You are willing to have the rate from Omaha to Kearney, on the Union Pacific railroad, made of the sum of the locals from Omaha to Fremont and from Fremont to Kearney ?

“ A. That's a ridiculous comparison, sir ; Kearney is not a distributing center.

"Q. Are you willing, as a merchant of Omaha, to have the rate from Omaha to Beatrice made up of the sum of the locals from Omaha to Lincoln, and from Lincoln to Beatrice?

"A. That is the same comparison. Beatrice is not a distributing center. When Beatrice becomes a distributing center we are willing to recognize it.

"Q. How about Lincoln?

"A. We are willing to recognize that as such.

"Q. And Fremont?

"A. Yes, sir.

"Q. You are willing that these two towns should be afforded these rates, then? They are interior Nebraska points.

"A. A town of consumption and of distribution are two entirely different sort of points.

"Chairman COOLEY: Do I understand that this principle that you are contending for is that this method of making up the rates shall apply from Omaha to trade centers and from thence to small towns beyond?

"A. It is to be applied to Omaha in connection with competing trade centers and towns beyond.

"Mr. THURSTON:

"Q. To all towns beyond?

"A. Yes, sir.

"Q. This is to apply to Omaha, Fremont, and Lincoln?

"A. Yes, sir.

"Q. And applied from Fremont to all these other towns beyond, irrespective of their being trade centers?

"A. It should apply from trade centers to all these towns.

"Q. Then it would apply from Fremont to all these towns the same as regards Omaha?

"A. Yes, sir.

"Q. So that Fremont could buy and sell goods as cheap as you can?

"A. Yes, sir.

"Q. And as cheap as Chicago?

"A. Yes, sir.

“Q. It is a matter of no moment that the place of ultimate destination is not a trade center?

“A. I don't understand the point you want to make.

“Q. I do not want to make any point, but simply want to know what you think should be the application of this principle? Is it a matter of any moment to the application of this principle that the point of the ultimate destination of the goods is not a trade center?

“A. No, not of any moment. It is simply to place the distributing centers on a par in competing for the trade of these points of ultimate destination.

Commissioner WALKER: “Do you recognize the existence of any distributing center between here and Chicago?

“A. We don't come in competition with any distributing center west of Chicago to amount to anything.

“Q. There are distributing centers in Iowa on the Mississippi river?

“A. Yes, sir.

“Q. Do you think the same rule should be applied to them?

“A. Yes; as far as we are concerned, we want to recognize all distributing centers.

“Q. I suppose, then, that you think, according to your rule, that the rate from Chicago to Omaha should be the rate from Chicago to the Mississippi river, plus the rate from there to Des Moines, plus the rate from Des Moines to Omaha?

“A. If Des Moines were competing for Omaha business against Chicago that would be the rule.

Chairman COOLEY: “Does not Des Moines come into competition with you through all this country in which you trade?

“A. I never heard of Des Moines in competition with Omaha.

Mr. GOUDY: “Is it not true that Des Moines sells furniture out through this country?

“A. It is a business I am not engaged in—a traffic that I am not familiar with.

“Q. You don’t know just what traffic Des Moines does have, then?

“A. No, sir.”

Mr. WOOLWORTH: “You are well acquainted with the whole course of business in this town?

“A. Yes.

“Q. And if Des Moines did business in this country you would know it?

“A. To any considerable extent; yes, sir.

“Q. And neither Des Moines nor any other Iowa town comes into competition with Omaha for the western business?

“A. I never heard of Des Moines in competition with Omaha.

“Q. Or any other Iowa town?

“A. No, sir.

“Q. Do you know what the relative business of Fremont and Omaha are as compared with each other, say last year?

“A. Fremont?

“Q. Yes, sir.

“A. The relative business of Fremont, Lincoln, and Omaha? The business of Lincoln, from the best information I can get, is about one-fifth of that of Omaha. Fremont is probably about one-tenth.

“Q. Do you know what the wholesale business of Omaha amounted to during the last year?

“A. The merchants’ traffic amounted to something like forty millions of dollars.

“Q. Do you know what the manufacturing business amounted to?

“A. Something like thirty millions of dollars.”

Mr. THURSTON:

“Q. What is the relative business of Omaha and Chicago?

“A. Omaha’s business is probably, in merchandise, one-fifth of Chicago. That is an approximate figure. As a meat-packing center we are the third in the United States.

“Q. Then, if Lincoln and Fremont have no rights against Omaha by reason of doing only one-fifth of the amount of

business that Omaha does, why should Omaha have any equality with Chicago when the ratio between them is the same?

“A. There is some place where you must draw the line, and the business of Omaha would seem to warrant that it had passed that line.”

Robert Easson, another witness, testified to having been in the wholesale grocery business at Omaha nine or ten years. Formerly his house had rebates from the Chicago roads, but since the Interstate Commerce Law was passed they had had none. The rates from Chicago to Omaha had not been diminished in consequence of the stoppage of the rebates. The result of the new rates was a loss of business at a good many competing towns or buying points, and a necessity of selling in other cases at cost or with very little profit.

“At Grand Island, for instance. The rate from Chicago to Grand Island was 55 cents, fourth class. The rate from Chicago to Omaha was 35 cents, and the rate from Omaha to Grand Island was 40 cents, making the rate from Chicago to Grand Island by Omaha 75 cents. This was 20 cents higher than the through rate. The staple goods in our line are sold on very close margins, and these rates force us to sell at cost in many instances, or they force us to lose the business.”

Charles A. Harvey and F. Colpetzer gave similar evidence regarding the lumber trade. Mr. Colpetzer testified as follows in regard to rebates :

Question by Mr. WOOLWORTH : “Did you used to get rebates before the operation of the Interstate Law?

“A. Yes, sir.

“Q. Have you ever got them since?

“A. I have not.

“Q. Have the railroads reduced their charges here in consequence of taking away these rebates?

“A. No, sir ; the rates are higher from Chicago and elsewhere to Omaha than they were prior to the Interstate Law,

and up to December they were higher than they have been for three or four years, and I think possibly five years. I think the present basis that is now in order is higher. The tariffs have been on the whole lower than they will be when they are restored again. They used to average about 16 cents, but in addition to that we received refunds. I do not believe that the lumber which was hauled into Omaha netted any road more on an average than 12 cents for the past three or four years, if they paid the agreed rebates.

“Q. Were these rebates allowed secretly or were they notorious?”

“A. Secretly, certainly. The rebates or special rates were made to get the business.

“Q. Is it not an open secret that all large dealers got rebates?”

“A. Yes; I should think it would be.

Question by Mr. THURSTON: “You say these rebates were an open secret. You do not mean that the public knew what rebates your company were getting? You did not give it away, did you?”

“A. No, sir.”

Allen T. Rector, in the wholesale hardware trade, testified to having formerly received rebates from the railroad companies, but these were discontinued March 5, 1887. He produced a table of figures to show that the discrimination against Omaha was as alleged in the complaint, and being asked why this discrimination should be made, replied:

“The present fourth and fifth class rates in operation from Chicago to Omaha are—4th class, 30 cents, and 5th class, 35 cents. Take Edgar, Nebraska, for instance. That is a common point 100 miles west of Omaha—a point tributary to Omaha. The fourth-class rate from Chicago to Edgar is 50 cents. Our fourth-class rate from Chicago to Omaha is 30 cents, and the fourth-class rate from Omaha to Edgar is 40 cents, making a discrimination against us of 20 cents.

“Q. And you don't know of any good reason for this discrimination?”

“A. No, sir; I cannot assign any good reason; I do not know any good reason for it.”



This statement of the salient points of the evidence will be sufficient for an understanding of its bearing upon the legal questions.

When the issues in this case were read and the opening made the questions presented seemed to be so nearly identical with those which were considered and passed upon in *Crews v. The Richmond and Danville Railroad Co.*, 1 Int. St. C. C. Rep. 401, that a comparison with that case was necessarily in the minds of the Commission and also of counsel, and continued to be so throughout the hearing. In the case mentioned a claim was made on behalf of the city of Danville, Virginia, which was, to say the least, analogous to that here made on behalf of Omaha, and the Commission had been obliged to hold that it was not tenable. Danville claimed to be, and unquestionably was, a trade center of large importance, and it was insisted on its behalf that in making rates this fact should be recognized by the railroad company, and its trade with the towns naturally tributary to it protected. Taking a concrete case, for illustration of the manner in which rates should be made to give this protection, it was claimed that the rates from Richmond to Danville added to the rate from Danville to one of the smaller points beyond it on the same line should not exceed the rate from Richmond direct to such smaller point, since if it did the rates would give Richmond, in respect to all merchandise coming from or beyond that city, an advantage over Danville in the competition with the trade of such smaller point, and this would amount to unlawful discrimination. The complaint in that case, as in this, directed the attention of the Commission specially to the competition between the trade centers as the circumstance to be prominently kept in view in making rates, as if the question to be determined related exclusively to the large towns, though it was evident upon the face of the complaint that if the relief prayed for were granted it must necessarily result in a large relative increase in the rates on long hauls to the smaller towns as compared to the rates which would be charged to trade centers.

In disposing of that case the conclusion of the Commis-

sion, as summarized in the syllabus, was that it was not a ground of complaint against a railroad company that it equalizes its rates as between small and large towns, even though the effect may be prejudicial to the large towns, which before had been specially favored. The spirit and purpose of the Act to regulate commerce requires that where the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made relatively equal; further, that a carrier is not compellable by law to give to merchants of a town on its line the privilege of shipping their goods from the point of purchase to their own locality and again from thence to the place at which the goods may be sold by them at the same rate which would have been charged had there been but one shipment from the point of purchase to the point of ultimate delivery. The fact that a refusal to give the through rate as for one shipment operates prejudicially to the town desiring the privilege and favorably to another town does not make the refusal operate as unjust discrimination when the carrier applies the same rule to all towns and accords the privilege to none. Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it cannot be predicated of action which in itself is impartial.

This is a short statement of what was decided in the Danville case, and the principles laid down seem to cover the case before us now. The relative position of Richmond and Danville as trade centers for any purposes of the application of the contested principle was the same as is the relative position of Chicago and Omaha, and the question of protecting Danville in its jobbing trade was the same that is now raised for the protection of the jobbing trade of Omaha. The Omaha rates are not in themselves alleged to be excessive or unjust. The claim of the complainants is tersely stated in one of the arguments presented on their behalf, as follows:

“We do not attempt at this time to say the rates in issue are too high or too low; that is not the question; it is the principle of their construction and the disastrous results that follow against which we are contending. This, and this alone, is the sum and substance of our complaint. Our pre-

sentations are surely sufficiently clear to avoid the possibility of misunderstanding. If the Chicago jobber can deliver his merchandise in Hastings, Nebraska, at a lesser cost for transportation than can his Omaha competitor, using the same Nebraska rails to the same destination, we think it proves beyond cavil that a preference is exhibited favoring the locality of Chicago to the detriment and disadvantage of Omaha."

This, with merely a change of names, is precisely what was claimed in the Danville case. The railroad company in making its rates had ignored the claims of trade centers to special privileges and made the rates to all the towns on its line proportional to distance, or nearly so, without distinguishing between those which claimed the distinction of being trade centers and those which could set up no such claim. The Commission held that in doing this the carrier did not depart from the spirit and intent of the Act to regulate commerce. In its indirect effects its action undoubtedly benefited the more distant trade center in the competition with one nearer a point for the trade of which both were contending; but this was not an illegal consequence when it resulted from action which in itself was impartial as between all towns, large and small. The Danville case would therefore seem to be decisive of the case before us.

In the arguments presented on the hearing, however, an endeavor was made to point out a distinction between the cases, and in one of them the distinction was supposed to be found in this: that in the Danville case the rates complained of were made by the defendant road exclusively, and were to towns on its own line, while in this case the roads from Chicago to Omaha "do not confine themselves to nominating rates to the end of their lines, but by a species of commercial conspiracy unite with the Union Pacific and others in a policy establishing joint rates between their initial point and interior Nebraska points which has for its avowed object, among others, the building up the jobbing and manufacturing interests of Chicago to our most serious hurt." As there is no proof of avowal of such an object as is here stated, we

may pass that by without further notice, and say only of the distinction here relied upon that it rests upon facts which in no way affect the principle.

If a rate when made by one company as a single rate would in law be unobjectionable, it would be equally so when made by several as a joint rate. The policy of the law and the convenience of business favor the making of joint rates, and the more completely the whole railroad system of the country can be treated as a unit, as if it were all under one management, the greater will be the benefit of its service to the public and the less the liability to unfair exactions. All the joint rates from Chicago to interior points in Nebraska may, therefore, for the purposes of this case, be tested by the same rules as if the lines were continuous and under one management. The uniting of the carriers in making them is not censurable unless the joint agreement is for the accomplishment of something unlawful or unjust in itself or in its consequences.

In a printed brief for complainants, filed with the Commission since the hearing, a different position is taken. In that brief, referring to the Danville case, it is said:

"The Commission holds that, as between Danville considered as a competitive point and local towns considered as non-competitive points, the former is not entitled to better rates than the latter. We accept that rule; we do not claim better rates for Omaha because it is a large town, at which many lines center, than are given to interior towns which are small and are located upon a single line. We go even further, and admit that, laying out of view the size of the town and its location upon one or several railroads, one point should have as good rates as another, regard being had to circumstances. It is here that we make our complaint. We say that better rates are given from Chicago to interior, smaller, and non-competitive points than Omaha enjoys. We claim the converse of the rule laid down by the Commission in the Danville case. The Commission should not be betrayed into error by a discussion of the abstract rule of the sum of the two locals. Our contention does not compel us to defend that rule. We say the sum of two locals must

not so far exceed the through rate as to operate a discrimination. It thus appears that the claim in favor of competitive points, as such, made in the Danville case is not made by us, and what is said in the opinion on that point has no application here."

And again:

"What we contend for is that the sum of two locals should not unreasonably exceed the through rate. Let allowance be made for the greater trouble and expense of re-shipments; but you must not make the difference so great as to operate a discrimination. To illustrate: Take a rate from Chicago to Omaha of 50 cents and a rate to Kearney, 200 miles farther west, of 51 cents, so that Omaha is shut out of and Chicago let into the trade at Kearney, there is a discrimination against Omaha which this Commission is organized to forbid."

One difficulty with this is that it does not harmonize either with the complaint or with the positions taken on the hearing. The complaint is planted distinctly on the claim that Omaha is discriminated against because the rates from Chicago to Omaha added to the rates from thence to the interior Nebraska points are greater than the rates from Chicago to such points direct. It was not conceded, but was inferentially denied, both in the complaint and on the argument, that they could be any greater and still be legal. The distinction which the brief attempts to make is therefore not in the case. But a further difficulty with it is that no evidence was given in the case to support any such theory as the brief advances, and if it is admissible that "allowance be made for the greater trouble and expense of re-shipment," we are without evidence to show whether the difference in rates complained of is or is not, on this theory, too great. It would be impossible, therefore, to decide the case on this theory, even if the issue made would admit of it, which it does not.

We are constrained, therefore, to hold that the decision in the Danville case covers the one before us, and if that decision is adhered to this complaint cannot be sustained. Nevertheless, this case has been pushed with earnestness and man-

ifest sincerity. We have listened carefully to all that has been advanced, being not only willing but desirous to overrule the former decision, if satisfied that we have committed any error in making it. We shall therefore proceed to consider the case in the light of what was said on the hearing, for the purpose of satisfying ourselves whether any reasons exist for a change of opinion.

But, first, we must repeat here what in substance has already been said, that this case cannot be regarded as one in which Omaha and Chicago are the business points exclusively interested. The case is very different from what it would be if that were the fact. The nature of the complaint is such that the sixty-one interior Nebraska towns named in it are the real parties respondent in interest, while Chicago, though its interest may be large, is interested only incidentally, and because the rates made from Chicago and Omaha, respectively, to such interior towns enable the latter to obtain their goods from Chicago direct cheaper than they can obtain them from Chicago indirectly through the jobbing houses of Omaha. The prayer of the petition can only be granted by increasing the rates from Chicago to such interior Nebraska towns without increasing those to Omaha, or in some other way making a relative difference in rates as against such towns which does not now exist. The parties who would directly or immediately suffer in consequence would therefore be the towns whose rates would be thus relatively increased.

The justification which is advanced for this relative difference in rates is that Omaha is a great distributing point as Chicago is, and entitled as such to special rates. It had special rates in the form of rebates before the passage of the Act to regulate commerce, and prospered upon them; but with the prohibition of rebates and the giving to the interior towns as favorable rates as Omaha now obtains, the field of its operations is narrowed and its business suffers, while Chicago reaps the benefit of its losses. Omaha, it is urged, is thus robbed of the advantages resulting from natural location and the enterprise of its citizens in building it up.

An obvious embarrassment in attempting to provide for and protect the claim made on behalf of trade centers is that

it is impossible that there should be any general agreement as to the towns which can be regarded as such trade centers. Indeed, in the nature of things, it is quite out of the power of any one to point out any test by which we may classify those which are and distinguish them from those which are not. The classification cannot be by size merely, for all trade centers are at some period small, and if the classification is by amount of business it will sometimes be found that a small town is, in some articles if not in all, doing a much larger jobbing business than another which is considerably greater. It often happens that a small town will have a large business in the manufacture and sale of some one article, and perhaps be as truly a trade center for that article as some other town ten or twenty times as great; but the small town which has begun a general jobbing trade with the hope and prospect of a great growth is not likely to perceive any justice in being kept from the fulfillment of its hopes by competition being precluded through the more advantageous rates which are given to the larger town which it aspires to rival. If equal rates will enable it to compete, its business men are very certain to think themselves wronged if they are not given such rates.

The difficulty in classifying towns as being or not being trade centers, or, as some of the witnesses phrase it, as being competitive or non-competitive, is made very plain in this case. The amended complaint assumes that none of the sixty-one interior points named is entitled to the privilege in rates which Omaha claims; or, in other words, is entitled to be considered a trade center. But Mr. Gibbon, a very intelligent witness for the complainants, concedes that Lincoln and Fremont are entitled to that privilege, and should have rates made to and from them on the same principle that Omaha seeks to establish on its own behalf. At the same time he apparently thinks it would be absurd to concede the like privilege to Beatrice. But why would it be absurd? We have no evidence that Beatrice or Kearney or other towns named in the complaint are entirely without jobbing trade. From our general knowledge of the country we can take notice that, as compared with Omaha, they are much smaller



towns; but we cannot know, unless informed by evidence, that they have not become, to some extent, centers of trade to still smaller towns about them; and if the trade-center theory were to be accepted and acted upon, it might become necessary to call upon the complainants to throw more light upon the case by evidence, and to put before us more distinctly their view of what constitutes a trade center, and at what stage in the growth of a prosperous Nebraska town it can claim privileges as such. Upon these subjects very little information was given on the hearing.

But a fatal difficulty with the theory that a trade center as such is entitled to specially favorable rates is found in the fact that it is in conflict with the spirit and purpose of the Act to regulate commerce. One of the reasons for the passage of that act was, that by means of rebates and other contrivances, large towns and heavy dealers secured advantages which gave them a practical monopoly of markets and shut out the small towns and small dealers. Omaha dealers, as the evidence shows, formerly had rebates, and the business of the town prospered to some extent in consequence thereof. The rebates are now forbidden, and the rates are not so made as to secure to dealers the advantages which the rebates formerly gave. This the witnesses think a grievance; but, if it be one, it is very certain that it is not one which the law has empowered the Commission to correct. The law, in forbidding rebates in the interest of equality as between large towns and small and large dealers and small, certainly did not intend that by any indirect action of any public authority this purpose of equality should be neutralized. All large towns, by reason of their being large, inevitably secure certain advantages in transportation. They get more roads, more trains, more agents and servants to attend promptly to business demands, and will be more accommodated within the limits allowed by law than will smaller towns, but it does not lie within the power of this Commission to add to these advantages by compelling the carriers operating the lines which reach out from a great railroad center to give to the large towns on their lines more favorable rates than they give to those which are smaller. The fact that under rela-



tively equal rates one town, by reason of its situation, its size, the extent of its manufactures or trade, or for any other reason, secures the major part of the trade with the small towns is not a fact which can empower this Commission to interfere. There may be great hardships in the situation, but those do not change the law. In contemplation of a law which was enacted in the interest of equality as between large and small interests, there can be no unjust discrimination in giving to large and small towns relatively equal rates. It is not a matter of the least importance, in a legal sense, that the small towns are strictly local and non-competitive. If, under relatively equal rates, they can elevate themselves to the class of jobbing towns, it is their right to do so; but, if not, they are still entitled, as against any action of this Commission, to have the benefit of such favorable rates as do not unjustly discriminate against others.

A statement was made by Mr. Gibbon in his testimony, and was repeated on the argument, in regard to the method of making rates, which requires some attention. It was assumed in both instances that these defendants in making rates from Chicago to interior Nebraska points, made them on a different principle to that which was applied elsewhere. Mr. Gibbon in his testimony states how he understands the rates to be made from New York to the Missouri river, and in the argument made on the hearing and filed in writing with the Commission afterward the same statement is in substance repeated, and is tersely summed up as follows:

“We have already shown the basis of construction of rates from the Atlantic seaboard to Omaha to be, for all practical purposes, the sum of the locals to Chicago added to the locals thence to the Missouri river.”

This statement, to say the least, is exceedingly inaccurate. The rates from the seaboard to Chicago are very far from being the sum of the locals. The Chicago rate is made as a through rate, and in making it the locals are not taken as a measure. If the rates from the seaboard to the successive trade centers, such as Albany, Buffalo, Detroit, and Chicago

were aggregated, the Chicago rate would be much greater than it is now ; so the aggregate of the locals from Chicago to the Missouri river would be greater than the through rate now given. Mr. Gibbon speaks of the through rates from New York to Chicago and from Chicago to the Missouri river as two locals, and his position is, that as the rate from New York to the Missouri river is made up of the sum of these two locals, so the rate from Chicago to the interior Nebraska towns should be made up of the sum of the two locals—first from Chicago to Omaha and then from Omaha to the interior town ; but this reasoning is on a purely arbitrary basis. The rate from New York to Chicago is not a local at all, but is in the strictest sense a through rate, and in making it, as is stated above, the great intermediate trade centers are disregarded. It is certainly in entire harmony with the method in which the Chicago rate is made by the roads reaching out from New York that the rate from Chicago to Lincoln, Fremont, or any other town of corresponding importance should be made as a through rate, taking no notice of intervening towns in making it ; but if the method of making rates from New York is examined further it will be found that not only are single through rates made to Chicago and to other great centers, but they are also made to small towns and insignificant stations in Ohio, Indiana, Michigan, and Illinois, and, indeed, generally through the country ; so that the practice of the defendant roads in making rates from Chicago to towns in Nebraska, large or small, as single rates, instead of being exceptional and peculiar, is in accordance with the practice generally prevailing.

In making use of the term "through rate" in respect to the rates from the seaboard to Chicago and from Chicago to Omaha we have done so without undertaking to indicate by definition the distinction between what rates should be called through and local, respectively. The needs of this case do not call for such a definition. To give some idea of how these rates are made and how they would compare with rates where the hauls are shorter, we give here the rates by the Pennsylvania from New York to Chicago, and also to important towns on its line before Chicago is reached, with the

distances from New York respectively—the rates being on merchandise in the first class :

	Distance.	Rate.
To Trenton.....	56 miles.	.25
Harrisburg.....	195	.33
Pittsburgh.....	444	.45
Chicago.....	912	.75

We also give a like table of rates from Chicago on the Chicago and Northwestern :

	Distance.	Rate.
To Sterling.....	110 miles.	.30
Clinton.....	138	.40
Cedar Rapids.....	219	.50
Omaha.....	492	.75

The points taken in each case are important points, and it is seen at a glance how the rates to Chicago and Omaha, respectively, are diminished with the distance, as compared with the rates to the other towns, and how inappropriate would be the designation of “local” as applied to them. A still more striking table would be presented if the comparison were made with rates from station to station along the lines of these roads. Taking the rates on the Chicago and Northwestern, for example, we find that the sum of four locals for 20 miles each might exceed the rate for the whole 492 miles to Omaha, so that the carrier may receive more for transporting a like kind of freight 80 miles in four consignments than for transporting it 492 miles in one consignment. But the four would be purely local, and the one a through shipment. These instances distinguish broadly between what is local and what is through freight, and they leave no question as to what term should be applied in the case before us. Purely local rates are those which are made from station to station and with some approximation to distance ; and though the term may be, and frequently is, applied more broadly, it is never in railroad circles or railroad literature made use of in connection with rates for long distances, which are made in disregard of rates to and from numerous intermediate stations.

But the arbitrary basis of the reasoning in support of the complaint on this branch of the case is manifest from another consideration, namely, that it has no force whatever except upon a concession of superior rights to Omaha as against other Nebraska towns. In the argument filed it is said :

“ We respectfully submit that if rates from Chicago on all classes of merchandise to interior Nebraska points be made on the basis of the sum of the locals it will be entirely consistent with the mode of construction obtaining from the Atlantic seaboard to the Missouri river, will equalize our advantages, so far as figures are concerned, with Chicago, and place every town in our state on a perfect plane of equality as to rates.”

Now, as already stated, the rates from Chicago to Omaha are not the sum of the locals. If they were, as, for example, if the Chicago and Northwestern were to make the Omaha rates the sum of the rates from Chicago to Clinton and from Clinton to Omaha, they would be considerably above what they are now. What this carrier does, however, is to make a through rate, disregarding the intermediate rates in doing so ; there is no sum of rates about it. It does precisely the same in making the rate to Lincoln, to Fremont, to Blue Springs, and to all the other towns named ; in this respect it treats them all alike. As it does not add together locals in making the rate to Omaha, neither does it in making the rate to the interior Nebraska towns. This certainly is not illegal unless Omaha has in law some right to consideration in the making of rates superior to that of other Nebraska towns. In the argument, as above quoted, it is assumed that it has, for when it speaks of placing “ every town in our state on a perfect plane of equality as to rates,” Omaha is by implication excluded as the one town which by its size, its importance, and the extent and nature of its business is entitled to have its advantages equalized with those of Chicago instead of being put on a plane of equality in rates with the others. We are compelled to say that the law does not confer upon

the Commission the power thus to equalize the advantages of commercial centers.

We have no occasion at this time to inquire how generally it is true that the rates from the seaboard to towns west of Chicago are made up of the rates to Chicago added to the local from Chicago to the point of destination. When any question respecting such rates, or rates in any other part of the country, is presented to the Commission and the principles stated in this opinion are found to be applicable they will be applied without hesitation, in the belief that they are just and right, and that they conform to the spirit of the Act to regulate commerce.

The conclusions of the Commission may be summed up in very few words :

*First.* The objection taken in one of the answers to the institution of proceedings by the Freight Bureau of the Omaha Board of Trade is not sustained. The case of *The Vermont State Grange v. The Boston and Lowell Railroad Company* (1 Int. St. C. C. Rep. 158) is sufficient authority for this ruling.

*Second.* We find the facts constituting the alleged ground of grievances to be as set forth in the complaint and amended complaint, respectively.

*Third.* Those facts do not make out a case of unlawful discrimination by the defendant carriers as against the city of Omaha, or show that that city is subjected to undue or unreasonable prejudice within the meaning of the third section of the Act to regulate commerce.

*Fourth.* The complaint must therefore be held not sustained.

**THE BUSINESS MEN'S ASSOCIATION OF THE STATE  
OF MINNESOTA, PETITIONER, v. THE CHICAGO,  
ST. PAUL, MINNEAPOLIS AND OMAHA RAIL-  
WAY COMPANY, DEFENDANT.**

Heard at Omaha, Nebraska, March 19, 1888.—Decided June 20, 1888.

1. One feature of the transportation of freight by railroads in long hauls on joint rates, or what is usually called through rates, unless there be exceptional conditions which modify the rule, is that the rate per ton per mile grows less in proportion to the greater distance, while the aggregate of the rate increases in proportion to such greater distance; but this is not found to exist in the case of the local rates of a railroad, where the stations are occasionally grouped, but more usually graded according to distance, except as an incident of rare and highly exceptional conditions of the transportation service.
2. The method of testing the freight rates of a railroad by the rate per ton per mile is one by which these rates may be brought down to the narrowest point of scrutiny, and in this sense is valuable, but it is like looking at them with a microscope, for it ignores all other tests except that which it alone furnishes, and does not take into consideration any of the surrounding circumstances and conditions that enter into the making of the rate, no matter how compulsory or imperious these may be, and for this reason it cannot be considered a controlling rule in determining the reasonableness of rates.
3. To determine the reasonableness and justness of any freight rate made by a railroad company, all the surrounding circumstances and conditions must be considered as well as the rights of the shipper, and if these circumstances and conditions are so compulsory or imperious that they fairly and justly exercise any controlling influence in the making of the rate, they cannot be disregarded in a proceeding in which the reasonableness and justness of the rate is presented for determination.
4. The words "substantially similar circumstances and conditions" as found in the 2d and 4th sections of the Act to regulate commerce, in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example: If the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him. Or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him. But if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves,

and forced upon him by the action of an independent state railroad, which is not subject to the Act to regulate commerce, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line.

5. When a carrier, acting in good faith, has adopted an exceptional rate, not unreasonable in itself, on a portion of its line, because that rate has been forced upon it by an independent state railroad company in direct competition with it and not subject to the Act to regulate commerce, the reasonableness and justness of rates on other portions of the carrier's line, extending into a far interior region of the country where no such conditions exist, cannot be measured, alone, by the standard thus furnished, but must be governed by considerations which fairly and justly apply to them.
6. The exceptional conditions of railroad transportation in proximity to the water-ways of the great lakes Michigan and Superior, and of rival competing railway lines operating between the ports on these lakes, as to the method of grouping stations under the combined effect of the competition of these water-ways and of the 4th section of the Act to regulate commerce, are found and stated by the Commission in this proceeding, citing and approving the Manufacturers' and Jobbers' Union of La Crosse against the Chicago, Milwaukee & St. Paul Railway Company, 1 Interstate Commerce Commission Reports, page 632.
7. The conditions of transportation on that portion of defendant's lines in a broad extent of far interior country where it is in competition with other great rival railway lines extending to Lake Michigan ports, while that of the defendant extends to Lake Superior ports, and the relation of each, arising therefrom, examined, found and considered by the Commission.
8. The Act to regulate commerce was not enacted to destroy competition, and the establishment of the rule of the rate per ton per mile, insisted upon by the complainant, would have very much the effect of practically making the rates charged for a long distance at the stations along the line of the defendant and its great rivals, the Chicago, Milwaukee & St. Paul Railway and the Minneapolis & St. Louis Railway, in the nature of strict mileage rates, thereby destroying competition to a large extent at these stations, unsettling the business of their shippers, conferring upon them no practical benefits, and loading the business of the carrier and the shipper at every such station with a multitude of infinitesimal fractions nowhere known in the business of railroads.
9. Elaborate tariffs of rates, the result of competition, made by one of several great railway systems, all competing for the business of a large extent of territory, are examined and considered in connection with those of its competitors, and with a view not to break down the legitimate competition thus existing, whereby rates are cheapened to the public generally, and these railways are correspondingly benefited in performing the work for which they were chartered and constructed.



*J. M. Burlingame, Esq.*, Counsel for Petitioner.

*J. D. Howe, Esq.*, Counsel for Defendant.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner* :

The complaint in this proceeding avers that petitioner is an association consisting of the several boards of trade, business men's associations, and farmers' organizations of the State of Minnesota, and that the object of the organization is to secure equal and reasonable rates for the transportation of persons and property in accordance with state and national legislation.

It avers that the Chicago, St. Paul, Minneapolis and Omaha Railway Company is an organization duly incorporated under the laws of the State of Wisconsin, and owning and operating lines of railway, and doing business as a common carrier in the transportation for hire of passengers and property in the States of Wisconsin, Minnesota, Iowa, and Nebraska.

It avers that the defendant railway company, for its services as such common carrier in carrying merchandise of all kinds and classes from Superior, Ashland, Washburn, Bayfield, and Duluth, Lake Superior ports, to stations on its line of road above indicated, has established and published a tariff of freights and charges, as it of right ought to do, which establishes and makes a reduced rate per ton per mile for the greater distance from said lake ports for all stations on its line of road between them and St. Paul, Minnesota, an average distance of 185 miles, while in the same tariffs for a continuous transportation of the same freights, over the same line and from the same points of origination, it establishes and makes a higher through rate per ton per mile for the stations west and south of St. Paul. In support of this charge the petitioner makes part of its petition a table of extracts from said tariff, wherein the rate per ton per mile is figured from the rates and distances as above stated, showing, as it is claimed, the results averred by the petitioner.



**That** on the first four classes of freight all stations in the State of Minnesota south of Henderson and on said line of the said defendant railway are charged an unreasonable rate and rate per ton per mile.

**That** on the fifth class (the most important class of general merchandise) all stations in the State of Minnesota south of St. Paul on the said line of road are charged an unreasonable rate and rate per ton per mile.

**That** on classes A and B all stations south of Henderson on said line are charged an unreasonable rate and rate per ton per mile.

**That** on class E all stations south of Mankato on said line are charged an unreasonable rate and rate per ton per mile.

**That** on classes C and D all stations on said line south of St. Paul are charged an unreasonable rate and rate per ton per mile.

**That** on the classes of coal and grain (staples of vital importance) all stations on said line of road are charged an unreasonable rate and rate per ton per mile.

**That** such charges are unjust and unreasonable and in violation of section 1 of an Act to regulate commerce, approved February 4, 1887.

**That** by such charges such common carrier gives an undue and unreasonable preference and advantage to several certain stations and localities along the line of the said route, and to the same extent subjects the certain other stations and localities to undue and unreasonable prejudice and disadvantage, in violation of section 3 of said Act.

The prayer of the petition is that the charges made in it may be investigated, and if established, that an order shall be made to said common carrier to amend its tariffs of rates and charges so that it shall not now nor at any time in the future charge as high a rate per ton per mile for the longer as for the shorter haul aforesaid, and that such proportionate

rates may be recommended as shall be just and reasonable, and as shall prevent all undue preferences and advantages and all undue and unwarranted prejudices and disadvantages.

The defendant railway company, answering this complaint, admits that it is a corporation chartered under the laws of the State of Wisconsin, and owns and operates lines of railway and is doing business as a common carrier over such lines in the transportation for hire of passengers and property in the States named in the complaint.

It neither admits nor denies the averment in the complaint that petitioner is an association consisting of the several boards of trade, business men's associations, and farmers' organizations of the State of Minnesota or the objects of said association.

It admits that as such common carrier it has established and published the tariff of freights and charges from Superior and other Lake Superior ports to stations on its line in the State of Minnesota and to other stations mentioned in the complaint.

It avers that even if it be true, as charged in the complaint, that defendant "establishes and makes a reduced rate per ton per mile for the greater distance from said lake ports for all stations on its lines of road between them and St. Paul, Minnesota, an average distance of 185 miles, while in the same tariffs for a continuous transportation of the same freights, over the same line and from the same point of origination, it establishes and makes a higher through rate per ton per mile for stations south and west of St. Paul," yet, if such statements are true, the defendant has not thereby violated any law of the United States.

The answer further denies all the other averments of the complaint.

On the hearing, the evidence adduced in this proceeding by the petitioner consisted of the tariffs in force upon the

railroad and those proposed to be put in force March 26th, 1888, of which notice had been given to that effect, and also oral testimony in relation to these tariffs and tables showing the relative rates per ton per mile on freight between stations along its line. It was admitted at the hearing by the petitioners that as to the first four classes of freight there was no serious ground of complaint, and that these would not have been embraced in the complaint but for the other matters complained of.

The evidence in support of the complaint was mainly directed at class 5, class A, and the commodity tariffs on coal and grain.

The chief articles in the 5th class, car-loads, are: apples, beans or peas, dried beef, canned meats and fish, cider in wood; coffee—green; crockery and earthenware; fish—dried; glucose; hides—green; hollow ware—iron; axle—wagon; iron—bar, band, boiler, rod; car wheels and axles; castings—iron, machinery, chain in casks, nails and spikes, nuts, bolts, rivets, washers, hinges; kraut, meats, and vegetables—dried or desiccated; molasses in barrels, kits, or kegs; oil—coal, carbon, crude petroleum, petroleum, lubricating, naphtha, gasoline, in tank cars; oil—coal, in wood or iron barrels; oil—cotton-seed, in barrels; oil—linseed, in barrels; oysters—cove or pickled; rice, rice flour, rice meal, and broken rice; rubber, roofing material; shot in bags, kegs, or boxes; soap—common; soap powder and washing and scouring compounds; stoves, furnaces; furnace castings, grate bars and castings, rocking grates and iron thimble collars; also stove plate and stove furniture; sugar—except maple or lemon, syrup N. O. 5, in barrels or kegs; tallow: tile roofing; vinegar in wood; wire cable; wire—fence, barbed and telegraph.

The chief articles in Class A, car-loads, are: agricultural implements; broom-corn, in bales; fire-engines; bedsteads, chair-stuff, and tables; handles—wood; machinery; mantels—iron, marble, or slate; mills—cider; mills—bark, cane, cob, grain, hominy, or paint; mills—saw; mill-stones; po-

tatoes—sweet ; poultry—alive ; presses—broom-corn, cheese, cider, copying, hay ; pumps—chain ; pumps—iron ; pumps—steam ; safes—cheese ; scrapers—road ; seed—Alfalfa, Lucerne, clover, timothy, cane, broom-corn, Hungarian, and rape ; sheep dip ; stump-pullers ; trucks—logging ; vehicles ; carts—mining, dump, or hand ; wagon wheels, wheelbarrows, wire binding for harvesters' boxes.

On this evidence petitioner contended that these rates were unjust and unreasonable in the particulars averred in the petition. The evidence was also directed to the coal and grain rates made in these tariffs.

On the part of the defendant railway company the evidence at the hearing consisted of its tariffs in force and to be put in force March 26th, 1888, of which notice had been given as required by the statute, with notations upon each of these of the rate per ton per mile on freight transported over its line to its different stations ; oral testimony as to how and upon what reasons all its different rates were made ; tables of comparison, tending to show that those rates were as low as, and in most instances lower than, those on neighboring and competing lines upon the same articles of freight ; and that the increase of the rate per ton per mile on most of its articles of freight south and west of St. Paul was justified by its condition and circumstances, had long been in force, had never been complained of by any shipper before, and was not in conflict with the rule of making rates by other railroad lines of the country similarly situated ; and that its increase of rate per ton per mile was caused by its grading its rates between stations according to distance. Upon this evidence it insisted that all of its rates were just and reasonable.

Without enumerating at length all the details of the evidence thus submitted, all of which we have carefully examined and considered, we deem it necessary to state only our findings upon the facts shown by this evidence, which are material to the merits of the controversy, and to the conclusions we have reached. These findings of fact we now state:

The petitioner is an association consisting of the several boards of trade, business men's associations, and farmers' organizations in the State of Minnesota, and the object of the association is to secure equal and reasonable rates of transportation of persons and property in accordance with state and national legislation. The Chicago, St. Paul, Minneapolis and Omaha Railway Company is a corporation incorporated under and by virtue of the laws of the State of Wisconsin. It owns and operates a large system of lines of railway, and does business as a common carrier in the transportation of persons and property in the States of Illinois, Wisconsin, Minnesota, Iowa, and Nebraska. Its rates assailed in this proceeding are upon shipments over the line from Washburn, Bayfield, and Ashland, each a Lake Superior port, to points south and west of St. Paul. The complaint relates to its rates at the following stations: Henderson, Le Sueur, St. Peter, Mankato, Medalia, St. James, Windom, Worthington, Lloverne, Pipestone, Sioux Falls, and Sioux City. Its shipments south and west from Lake Superior ports are chiefly from Washburn. Its rates as between Washburn and St. Paul, a distance of 188 miles, are conceded to be reasonable and just. These last-named rates are rates made by the St. Paul and Duluth railroad, a much shorter line from St. Paul to Duluth—a large and important Lake Superior port—which line is wholly within the State of Minnesota, 152 miles in length, not within the superintending control of the Act to regulate commerce, approved February 4, 1887, and are thus forced upon the Chicago, St. Paul, Minneapolis and Omaha Railway Company, which must make the same rates between Washburn, Bayfield, and Ashland, on the one hand, and St. Paul on the other, or else go out of the business, or sustain very great financial loss. By a branch of its line extending from Superior Junction to Superior, a port on Lake Superior, and reaching to Duluth, the defendant also has a line extending from St. Paul to Duluth, and by this line the distance from St. Paul to Duluth is 178 miles. The rate per ton per mile on these roads from all these Lake Superior ports by defendant's lines to St. Paul is one that continually grows less as the distance increases,

while the aggregate charge grows greater with the distance the freight is transported, as between these Lake Superior ports and St. Paul. It is one of the necessities of the present situation that rates from and to these Lake Superior ports from St. Paul must be substantially the same. The rates from Washburn to St. Paul are not remarkably low rates.

From St. Paul to stations on its line south and west, such as Henderson, Le Sueur, St. Peter, Mankato, Medalia, St. James, Windom, Worthington, Lovorne, Pipestone, Sioux Falls, and Sioux City, as to the first four classes of freight the rates are graded, usually, according to distance, in some instances grouped so as to make the same rate at contiguous stations. These rates are conceded to be substantially reasonable by the petitioner, and we do not find from the evidence that they are unreasonable or unjust. We mention these stations because they are those that are named in the complaint.

From and to these stations rates are graded in much the same manner on articles in the 5th class, in the A class, and upon coal and grain as in the first four classes named, except that at some of the stations the rate per ton per mile increases somewhat more in proportion to distance than does the rate per ton per mile upon articles embraced in other classes of freight, while in other instances they do not, and there is also the same occasional grouping of stations. The increase of the rate per ton per mile at the stations south and west of St. Paul results from the grading of the rates at these stations according to distance.

The defendant's line from Duluth and Washburn through St. Paul to the stations in the State of Minnesota and Territory of Dakota and into Western Nebraska is crossed fifteen times, at about an average distance of twenty-seven miles apart, by lines of railroad which lead directly to ports on Lake Michigan. There is a sharp competition for business on defendant's line south and west of St. Paul, between business seeking the Atlantic coast by way of Lake Michigan,

during the season for navigation, and the trunk lines at all times, and such business seeking the same destination over defendant's lines by way of Lake Superior, during the navigable season, and the lines of railway connecting with the Canadian systems at all times. A fixed relation of rates to meet this condition of affairs exists, and these rates appear to have been established after numerous rate-wars between the great competitive lines. To illustrate: The rate from Sioux City to Duluth, which is the same as to Washburn, is the same as the rate from Sioux City to Chicago, and the rate from Mankato to Duluth or Washburn is the same as the rate from Mankato to Chicago. This is because Chicago is the eastern terminus of the Chicago and Northwestern railway, as Washburn is the northeastern terminus of the Chicago, St. Paul, Minneapolis and Omaha railway for Lake Superior business, and Mankato is the crossing point of these great rival lines, where freight could be made to go either to Chicago or Washburn, according to difference in rates. The rates made on defendant's line at these points are so arranged as to meet this competition, and at the same time are so graded and grouped as to avoid a violation of the 4th section of the Act to regulate commerce, approved February 4, 1887.

A large portion of the traffic of the defendant's road, commencing at Washburn and destined for points south and west of St. Paul, is through freight. A large portion of its east-bound traffic is wheat that is dropped at Minneapolis and is therefore local freight. There is no evidence as to the amount of defendant's shipments south and west from Superior and Duluth.

For a considerable distance south and west of St. Paul the defendant's railway line runs somewhat parallel to the Chicago, Milwaukee and St. Paul railway and the Minneapolis and St. Louis railway. Stations upon these several lines are frequently competitive, but in no instance is the distance exactly the same from the points of origin of the freight. To require a constant decrease in the rate per ton per mile as the distance increases over which freight is transported



would have much the same effect upon the business of these railroads at these stations as would an equal mileage distance tariff. An equal mileage distance tariff for each of these stations on each of these railways would destroy competition, and so would the establishment of an equal rate per ton per mile. The establishment of rates to such stations based upon an equal rate per ton per mile would also result in a system of infinitesimal fractions in the rates at these stations, nowhere known in the railroad business, and which would result in constant confusion in the carriers' business as well as the business of shippers, accomplishing no substantial and practical benefits to the communities surrounding these stations.

A result of the competition of the water lines, afforded by Lakes Superior and Michigan on the one hand, which are not subject to the provisions of the Act to regulate commerce, and in connection with these the operation of the 4th section of the Act to regulate commerce upon the railroads has been a phenomenally low standard of rates diffused over a very large section of country situated between the rival ports on these lakes and the lines of railway extending from them to St. Paul and Minneapolis. Before the enactment of the Act to regulate commerce this existed as to only a very few stations, but since then, from the causes named, it has prevailed over a large extent of country, and numerous stations on these railroads, widely distant from each other, have the same groups of rates. The same results have not reached into the interior south and west of Mankato to anything like the same extent. The interior points on the lines south and west of Mankato are indeed greatly benefited by this condition of affairs in their through rates to and from distant markets, though not to the same extent as points situated along the railway lines between these rival lake ports. In the one instance, grouping of stations so as to give them the same rates is a present peculiarity of the situation; and in the other, owing to greater distance from these water-ways, interior locality, a much lighter volume of freight, large increase of cost of transportation and expense of maintaining operation



in proportion to the less volume of business, and the much greater absence of competition, it results that the grading of the rates at stations according to distance becomes also, to a considerable extent, a necessity of the situation, though in some instances these are grouped.

These findings of fact are such as we make upon the complaint, as made, and the evidence in reference to it; and, as required by the statute, we now proceed to state our conclusions.

The questions involved in this proceeding are of an important character to the public in a large section of the country as well as to the carriers. Features of some of these questions as then presented we have had occasion to consider and discuss in other proceedings, but others of them have not heretofore been presented in any controversy for our determination.

Substantially there are two specific charges in the complaint. One is that the rates are unreasonable and unjust; the other is that the rate per ton per mile is unreasonable and unjust. These two charges are made against the rates to all of a certain class of stations named under six different heads in the complaint. The stations thus specifically named in the complaint are Henderson, Le Sueur, St. Peter, Mankato, Medalia, St. James, Windom, Worthington, Laverne, Pipestone, Sioux Falls, and Sioux City. But intermediate stations not specially mentioned are also included in the general terms of the complaint.

The complaint, after averring that the rates charged by the defendant between Washburn, Bayfield, Superior, Ashland, and Duluth, Lake Superior ports, to St. Paul are reasonable rates, and that in making them the rule is observed of making a reduced rate per ton per mile from these lake ports to all stations on the line of railroad for the greater distance to St. Paul, which, it is alleged, is the correct rule on the subject, proceeds to charge that as to stations south and west of St. Paul this rule is violated, and not only much higher rates are charged on freight in consequence of this

violation, but also in the manner in which the rates are graded at many of these stations.

At the outset we find it necessary to examine and consider the primary proposition involved in petitioner's complaint, which is that as to rates between the above-named Lake Superior ports and St. Paul, which are conceded to be reasonable, fair, and just, and as following the rule that the rate per ton per mile must be less for the greater distance, and that these should furnish the rule for making all other rates on defendant's line south and west of St. Paul. But little of the freight brought by defendant south from these lake ports comes from Ashland, Superior, and Bayfield. Nearly all of it originates at Washburn. There was no evidence as to the amount of freight it brings from or carries to Duluth. The distance between this point and St. Paul by defendant's line is 178 miles. The distance from Washburn to St. Paul by defendant's line is 188 miles. The distance from St. Paul to Duluth—another large and important Lake Superior port, not far distant from Washburn, and rival and competitive with it—by way of the St. Paul and Duluth railroad is 152 miles. The St. Paul and Duluth railroad is a State road, and having both its termini in the State of Minnesota, and, so far as its business is concerned, which is not interstate, is not governed by the provisions of the Act to regulate commerce. The rates made by the St. Paul and Duluth railroad between Duluth and St. Paul are considerably lower than any rates which the defendant has on its line of railway anywhere, except between Washburn and St. Paul, and Superior and Duluth and St. Paul, and are adopted by the defendant as to freight between Washburn and St. Paul, because it is obliged to carry this freight at the same rate that the St. Paul and Duluth railroad carries freight from Duluth to St. Paul or else virtually go out of the business, or if remaining in it, to lose a great part of this business and thereby sustain large financial loss. At the same time these rates between Washburn and St. Paul are not exceptionally low rates. If it were true that the defendant, without being coerced into making these rates between Washburn and St.

Paul by a state railroad not subject to the provisions of the Act to regulate commerce, had made these rates of its own choice, then there might be much force in the ground assumed by the petitioners. As it is, however, the fact that the defendant railway company adopts these rates, not as a matter of choice, but because it is compelled to do so in consequence of the rates made by the St. Paul and Duluth railroad from Duluth to St. Paul, or else sustain large and irreparable loss from failing to do so, is a factor in the situation that cannot be disregarded. Upon business principles it is clear that the defendant railway company would proceed on a management that would be greatly prejudicial to those who have invested their money in its corporate enterprise, if it did not adopt the same rates from Washburn to St. Paul that the St. Paul and Duluth railroad has made from Duluth to St. Paul, provided it can do so consistently with law. As stations on its line south and west of St. Paul this carrier does, indeed, in many instances, have to meet competition, but it is the competition of carriers which, like itself, are subject to the provisions of the Act to regulate commerce, and as against them it has the protection afforded by the statute. Nowhere else, except between Washburn and St. Paul, does it encounter the competition of a line of railroad having its termini exclusively within the limits of one state and operating a shorter line of road, which makes rates that it is compelled to adopt.

The question then arises, Do these conditions and circumstances justify the defendant in adopting the rates it does between Washburn and St. Paul? The words "substantially similar circumstances and conditions," as found in the second and fourth sections of the Act to regulate commerce, as we understand and construe them, in certain important particulars define the duties and rights of carriers, and the rights of shippers as well. If the carrier claims to act under a compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him. If the carrier claims to act under a compulsion of circumstances and conditions, which

he could obviate by reasonably fair and just exertion on his part in the making of an exceptional rate, then they will not avail him. But if the carrier is in good faith acting under the compulsion of circumstances and conditions beyond his control, not of his connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid overwhelming loss adopts exceptional rates forced on him by the action of an independent state road which is not subject to the Act to regulate commerce, and which is operating a shorter and competing line with his own, these are, in our opinion, under the operation of the statute, circumstances and conditions which justify him in doing so.

Can it then be said to be a fair basis of comparison to take these rates between Washburn and St. Paul as the standard for what should be reasonable rates at stations on defendant's line south and west of St. Paul? We think not. The rates of defendant between Washburn and St. Paul are not made by the defendant upon the ground that they are reasonable, but are adopted from the necessity of the situation, and as forced upon it by the St. Paul and Duluth Railroad Company. It results from what we have stated that the rates of the defendant at its stations south and west of St. Paul on shipments from Washburn, Bayfield, and Ashland, as to their reasonableness and justness, must be determined by other considerations than the mere fact that, as between these Lake Superior ports and St. Paul, the defendant is compelled to adopt comparatively lower rates made by the St. Paul and Duluth Railroad Company.

The stations south and west of St. Paul on the defendant's line, as we have found, are occasionally graded, and in other instances grouped, so as to avoid violating the fourth section of the Act to regulate commerce by making a greater aggregate charge for the transportation of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance. The manner in which these stations are grouped, where they are grouped, does not appear to work injuriously by giving to the shippers of one community relatively better

rates than another in the shape of unjust discrimination. The stations, on the other hand, that are grade, do appear to be so graded according to distance as to make the aggregate charge relatively higher, though not so in such proportion as to injuriously prejudice the shippers in any locality, so far as we can see from the evidence adduced in this proceeding. The method of grouping stations and grading stations for a continuous haul of freight by a railway carrier is one that is very common in this country and is not necessarily illegal, unless the results that flow from it are illegal. (La Crosse M. & J. Union v. Chicago, Milwaukee and St. Paul Railway Co., 1 Interstate Commerce Commission Reports, page 631). The rates thus made at stations south and west of St. Paul are in nearly every instance relatively higher than the rates between stations of the same distance on the line of defendant's railroad between Washburn and St. Paul; but, at the same time, when these rates are compared with those of other lines, they appear to be as low as, and in most instances lower than those of other neighboring and competing lines of railroad. According to the largely preponderant weight of evidence in this proceeding they are reasonable rates.

The conclusion we have reached as to the manner in which the rates of the defendant are made between Lake Superior ports and St. Paul show that they cannot be adopted as a just and fair basis for the operation of the rule insisted upon by the petitioner as to the rate per ton per mile to points south and west of St. Paul. It is very true that, unless exceptional conditions exist modifying such a rule, in the case of joint rates, the rate per ton per mile usually grows less in proportion to the greater distance, and that examples of this may be seen in tariffs of railroads generally in the United States upon long hauls of freight. This result does not usually occur in the local tariffs of railroads where the stations are graded occasionally and in other instances grouped. The rates of the defendant are not joint rates. They are its own *local* rates made for stations along its line between and to and from Washburn and Sioux City, Washburn and Pipestone, and Washburn and Sioux Falls, and all

intermediate stations on its road over a main line of railroad 455 miles in length.

We referred to this subject in the case of Farrar & Company against the East Tennessee, Virginia and Georgia Railroad Company and the Norfolk and Western Railroad Company, (1 Interstate Commerce Commission Reports, page 487.) That was a case of joint rates on lumber. We there said: "It is a familiar rule in the transportation of freight by railroads, and has become axiomatic, that while the aggregate charge is continually increasing the further the freight is carried, yet the rate per ton per mile is constantly growing less all the time, unless there be exceptional conditions modifying this rule. In consequence of the existence of this rule the increase of the aggregate charge continues to be less in proportion every hundred miles, arising out of the character and nature of the services performed and the cost of the service; and thus it is that staple commodities and merchandise are enabled to bear the charges of transportation from and to the most distant portions of our country." We were then considering and discussing *joint rates*, but even as to these we recognized that there might be "exceptional conditions" modifying the rule.

These exceptional conditions are found to exist in this very case. These are seen most notably in the case of the rates between Washburn and St. Paul, which we have already discussed. Other exceptional conditions are seen in the differences which exist between a large section of the country situated between rival ports on two great lakes, at a large number of stations necessarily grouped upon rival and competing lines of railroad near to and operating between these ports, and under the operation of the long and short haul clause of the Act to regulate commerce, and on the other hand, a large interior section of the country adjoining this, where the circumstances and conditions are substantially different, and as to which the shipper must look largely to the benefits arising from competition of railroads alone and the reasonableness of rates required by that statute, and is not

aided in these by large water-ways, which afford much cheaper transportation and rates that are not subject to the Act to regulate commerce. In the one case the carrier groups stations covering a considerable section of country, because he is forced to do so from a variety of controlling circumstances, such as water competition and the operation of the long and short haul clause of the Act to regulate commerce, and others that might be named. In the other case, to meet the competition of lines that, like its own, are subject to the Act to regulate commerce, the carrier, in making its tariffs, occasionally groups stations, and in other instances grades stations, so as to keep up to something like a systematic and fair uniformity the aggregate rate to the different stations along its line. In the case of *Evans and Reed against the Oregon Railway and Navigation Company* (1 Interstate Commerce Commission Reports, page 336) we had occasion to consider the subject of comparing the rates established on railroads in one portion of the country with those in another, operated under substantially different circumstances and conditions, and we there held that such comparisons are not fair tests. That is equally true of the present case of comparisons between rates made in that portion of the country so near as to be dominated by the water rates on Lake Superior, and on the other hand, rates in the far interior made under substantially different circumstances and conditions. And again, in the case of the *Manufacturers' and Jobbers' Union of La Crosse v. The Chicago, Milwaukee and St. Paul Railway Company*, we said: "Many circumstances fairly entitle, and sometimes compel, the carrier to make rates on one line proportionately less than are made on another." Some of these circumstances are there enumerated. (1 Interstate Commerce Commission Reports, page 632.)

The rule that the rate per ton per mile must be less for the greater distance is one of the tests by which the rates can be carefully scanned in themselves. It is, however, like looking at them with a microscope. It ignores all other tests except that which it alone furnishes. It ignores all



surrounding circumstances and conditions and every factor of every kind and description that enters into the making of the rate, no matter how compulsory or imperious that factor may be. It serves in itself a valuable purpose, not only as a close test of what a rate really is, but also as a basis in the cases to which it can be made to justly apply as a rule; but to determine the reasonableness and justness of a rate, all surrounding circumstances and conditions, and the factors which enter into the making of the rate, if there are any that are compulsory or imperious, must be considered as well as the rights of the shipper. That is apparent in the present case. This rule, as invoked in this proceeding, ignores the circumstances and conditions which surround the making of the rate by the defendant from Washburn to St. Paul. It also ignores the circumstances and conditions which surround the defendant railway for a long distance south and west of St. Paul, where the stations along the defendant's line are so near the stations upon the Chicago, Milwaukee and St. Paul railway and those upon the line of the Minneapolis and St. Louis railway as to be competing lines and stations with each other. To establish it as a rule for these stations would have very much the effect of the establishment of mileage rates for the same stations. It would destroy all competition between them, because none of them are exactly the same distance from the point of origin of freight, or else, on the other hand, it would load the business both to the carrier and to the shipper with a multitude of infinitesimal fractions nowhere known in the business of railroads.

We had occasion in the case of Evans and Reed, *supra*, to consider and state some of the considerations which enter into the reasonableness of freight rates, and in connection with the enumeration we there said: "A variety of considerations of a very practical nature must always enter into the making of freight rates by a railroad company, and these also go very far in every instance to determine the question of whether such rates are reasonable or unreasonable. It would be very dangerous to the successful existence of such companies if they had to make or were required to make



freight rates upon mere theories or conjectures. They have to deal with business as they find it." The same idea is expressed in different language in the first annual report of the Interstate Commerce Commission to the Secretary of the Interior, where it is said: "It is quite impossible to deal with this subject on mathematical principles."

The conclusions we have already expressed are decisive of this proceeding; but there is another feature of it which we think deserves to be noticed in connection with them, arising upon the evidence and our findings upon the facts. There is a fixed relation of freight rates existing from and to points south and west of Mankato on the line of the Chicago, St. Paul, Minneapolis and Omaha Railway Company on business going to, or coming from, the east, by the competition which exists between this railway and the lines reaching Chicago and other Lake Michigan ports from this section of the country. This is clearly indicated in the evidence. It appears to be the difference of rates between Buffalo and the Lake Michigan and Lake Superior ports, respectively, and this difference, it seems, is usually two and one-half cents per hundred pounds lower on freights from Lake Superior ports, this being the longer route, than from Lake Michigan ports, though the difference has been as great as five cents per hundred pounds. There is between these lines a strong competition for the business of this portion of the country. The rates established have been the result of this competition. This competition has served a valuable purpose in the cheapening of rates in the section of the country south and west of Mankato, and thus has done the public a great benefit. It is beneficial and important to the public as well as to the railroads that this competition should not be broken down. A change, large, far-reaching, and sweeping, in this system of rates, such as is sought to be accomplished by the complaint in this proceeding, would involve great and corresponding changes in the system of rates upon rival competitive lines reaching Lake Michigan ports from this section of the country, and would not only completely unsettle the carrying trade, but would greatly disturb and unsettle business,

in many instances causing financial wrecks of business men, as well as entailing great losses upon this carrier which might have the effect of forcing it into bankruptcy. Consequences like these could be justified only upon the ground that in the administration of the statute they were the necessary and unavoidable results of correcting serious abuses, and such abuses we do not find to exist from the evidence in this proceeding.

The order of the Commission is that the petition be, and the same is, hereby dismissed.

**THE BUSINESS MEN'S ASSOCIATION OF THE STATE  
OF MINNESOTA, PETITIONER, v. THE CHICAGO  
AND NORTHWESTERN RAILWAY COMPANY, DE-  
FENDANT.**

**Heard at Omaha, Nebraska, March 19, 1888.—Decided June 20, 1888.**

- 1. The circumstances and conditions as to the transportation of freight on the line of the defendant between Chicago and St. Peter, on the one hand, and between St. Peter and Pierre, on the other, found, examined, and considered by the Commission, and held to be substantially dissimilar upon the facts set forth in the report and findings in this proceeding.**
- 2. The rule of the rate per ton per mile decreasing for the greater distance while the rate is increasing in the aggregate, examined and discussed by the Commission in its application to the present proceeding, and held to be inapplicable.**
- 3. The difference between the cost of service by which the local business of this railroad and its through business is done relatively, examined and considered by the Commission so far as they are involved in this proceeding.**
- 4. Comparison of rates charged by railroad companies under circumstances and conditions substantially dissimilar, really prove nothing, and cannot be adopted as standards in arriving at the reasonableness and justness of rates.**
- 5. Exceptional cases of rates made lower than other rates by a carrier on one portion of its line by the action of a competitor, and in which it is without fault itself under the operation of the Act to regulate commerce, cannot be adopted as the standard as to other rates upon a far distant portion of its line where no such exceptional conditions exist, and the reasonableness of its rates must be determined by altogether different considerations.**
- 6. Where the evidence adduced in a proceeding like this fails to establish grounds relied upon, as stated in the complaint, and upon which it is heard and tried before the Commission by the parties and their counsel, and to which the evidence is directed, but shows that upon a portion of its line, as for example between St. Peter, in the State of Minnesota, and Pierre, in the Territory of Dakota, that the rates are made upon a basis which seems to grade them with large differences between stations contiguous to each other, and the grounds assigned for this by the carrier are the additional cost of service incident to operating a new line through a thinly inhabited and but little cultivated country, with very light traffic, and in which the transportation is seriously impeded by snow-blockades, and where the coal used for fuel in operating the trains has to be brought by the carrier a distance of nearly five hundred miles, but the evidence is not given with that fullness of detail which should**

sustain such extra rates of charge, the Commission, while it will not hold the rates to be unreasonable, will, also, not hold that they are reasonable, but will investigate this question in a separate proceeding under the statute by which all the parties in interest will have an opportunity to be fully heard, and can bring forward all the evidence upon a subject that is important and involving valuable rights, alike to the public and to the carrier.

7. When, in a proceeding such as this, evidence is introduced by a party and he is permitted to do so for the single purpose of the bearing it may have upon the reasonableness of the rate, which would be inadmissible for any other purpose, and it tends to show a difference of rates of the carrier by which a combination could be made of those rates upon the different tariffs that would be improper and unjust, the carrier not being allowed to controvert it upon the hearing, as to any other feature, except so far as it had a bearing upon the reasonableness of rates, because it would involve a collateral inquiry, the Commission will not determine this collateral inquiry or the question it presents until an opportunity has been furnished the parties to be heard in a proceeding such as is provided for by the statute. For example: where the complaint of the petitioner makes no allegation that under the tariffs of the carrier freight may be shipped from Chicago to St. Peter at one rate, there unloaded, and then subsequently re-shipped from St. Peter to each of the stations between St. Peter and Pierre at a rate which added to the rate from Chicago to St. Peter is considerably less than the direct rate from Chicago to each of these stations, but on the hearing the complainant is allowed to introduce evidence upon this subject simply for the purpose of showing that the rates between St. Peter and Pierre are unreasonable and for no other purpose, the carrier having at the time the complaint was made a number of tariffs, as follows:—a distance tariff for the State of Illinois, a distance tariff for the State of Wisconsin, a distance tariff for the State of Minnesota, a distance tariff for the Territory of Dakota, local tariffs to and from all points on its line in each of the states through which it passes and the Territory of Dakota, and a tariff from and to Chicago and all points along its line, extending to Pierre, a distance of 781 miles.

*J. M. Burlingame, Esq.*, Counsel for Petitioner.

*W. C. Goudy, Esq.*, Counsel for Defendant.

#### REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner*:

The petition in this proceeding avers in substance that petitioner is an association consisting of the several boards of trade, business men's associations, and farmers's organizations in the State of Minnesota, and that the object of the

association is to secure equal and reasonable rates of transportation of persons and property in accordance with state and national legislation.

It also avers that the Chicago and Northwestern Railway Company is a corporation duly incorporated under the laws of the State of Illinois, and is a common carrier engaged in the transportation for hire of passengers and property, and owning and operating a railroad that runs through the several States of Illinois, Wisconsin, Minnesota, and the Territory of Dakota to and from the city of Chicago, in the State of Illinois, between and through the various stations on its said line of road, including Winona, Janesville, Mankato, St. Peter, Nicollet, Newell, Sleepy Eye, Sanborn, Tracy, and Lake Benton, in the State of Minnesota, and Huron and Pierre, in the Territory of Dakota.

It avers that the defendant railway company, for its services as such common carrier in carrying merchandise of all kinds and classes from Chicago and Lake Michigan ports to stations on its line of road, as above indicated, has established and published a tariff of freights and charges which, as of right it ought to do, establishes and makes a reduced rate per ton per mile for the greater distance from Chicago for all stations on its said line of road between Chicago, Illinois, and Janesville, Minnesota, a distance of 412 miles, while in the same tariff for a continuous transportation of the same freights, over the same line and from the same point of origination, it establishes and makes a higher through rate per ton per mile for all stations west of Janesville. In support of this last averment the petitioner sets forth in its petition a table of extracts from said tariff wherein the rates per ton per mile are figured from the rates and distances as stated by the defendant railway company for the purpose of showing the charges to be true as made in complaint.

It avers that such charges are unjust and unreasonable and in violation of section 1 of the Act to regulate commerce, approved February 4, 1887, and that by such charges such common carrier gives an undue and unreasonable preference and advantage to the several certain stations and localities

along the line of its route, and to the same extent subjects the several other certain stations along its line to undue and unreasonable prejudice and disadvantage in violation of section 3 of said Act.

The petition prays that an investigation of these charges may be made, and if the facts are found to sustain them, that said common carrier may be ordered to amend its tariff rates and charges so that it shall not now, nor at any time in the future, charge a higher rate per ton per mile for the longer than for the shorter haul aforesaid, and that such proportionate rates may be recommended as shall be just and reasonable and as shall prevent all undue preferences and advantages and all undue prejudices and disadvantages.

To so much of this petition as states facts alleging unjust discriminations and which are found in the first, second, and third paragraphs of the complaint, the defendant railway company demurs upon the ground that there is no provision in the Act of Congress of February 4, 1887, requiring the railway carrier to transport freight at a rate fixed by the ton and mile, as supposed in said complaint, and that said complaint shows the fact to be that the Chicago and Northwestern Railway Company does not charge or receive a greater compensation for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance, and that it has fixed this tariff in accordance with the several provisions of said Act. To all the portion of the complaint which avers that the charges of the railway company are unreasonable and unjust and in violation of section 1 of the Act to regulate commerce or section 3 of said statute, the railway company enters a general denial and demands that complainants shall be required to make proof of these allegations.

The only issue presented by the petition in this proceeding is whether the rates of the Chicago and Northwestern Railway Company on its main line, extending from Chicago through Winona, Janesville, St. Peter, Nicollet, New Ulm, Sleepy Eye, Sanborn, Tracy, and Lake Benton, in the State

of Minnesota, and Huron and to Pierre, in the Territory of Dakota, as established, are just, fair, and reasonable rates, according to the rule asserted in the petition as the correct rule, namely, that of making a reduced rate per ton per mile for the greater distance from Chicago to these stations in the State of Minnesota and Territory of Dakota, as is alleged has been done between Chicago and St. Peter, in the State of Minnesota. To the inquiry involved in this issue our findings of fact must be directed. Other collateral questions were suggested at the hearing in the evidence for the first time, but these can now be considered only so far as they bear, if at all, upon the reasonableness of the rates as tested by the above rule.

The Chicago and Northwestern Railway Company is a corporation incorporated under and by virtue of the laws of the State of Illinois. It owns and operates a large system of railroads extending through the States of Illinois, Wisconsin, and Minnesota, and through the Territory of Dakota. That one of its lines, the rates of which are involved in this proceeding, extends from Chicago, Illinois, to Pierre, in the Territory of Dakota, a distance of 781 miles. This company, for this portion of its line, has what is called a distance tariff for the State of Illinois. It has also a distance tariff for the State of Wisconsin. It also has a distance tariff for the State of Minnesota. It also has a distance tariff for the Territory of Dakota. It also has tariffs to and from all points on this line in each of the states through which it passes and the Territory of Dakota. It has a general tariff from Chicago to all points along its line extending to Pierre. The distance from Chicago to Janesville, Minnesota, is 412 miles ; to Mankato, 430 miles, and to St. Peter, 442 miles.

In consequence of the combined operation of the water competition afforded by Lakes Michigan and Superior and the near proximity to each other of large and rival lines of railway, extending to and from important points on these lakes, often crossing each other, and the competition thus existing, on the one hand ; and, on the other hand, the oper-



ation of the long and short haul clause of the 4th section of the Act to regulate commerce, the consequence has been, as we have had occasion to find in several cases before us, the rates are grouped in a large extent of this territory along the lines of these railroads. For instance, the rates are the same at La Crosse or Winona that they are at Mankato, about two hundred miles west of La Crosse. The facts in relation to these conditions of transportation were found and considered in the case of the La Crosse Manufacturers' and Jobbers' Union *v.* The Chicago, Milwaukee and St. Paul Railway Company, and also in the case of the Business Men's Association of the State of Minnesota against the Chicago, St. Paul, Minneapolis and Omaha Railway Company, heard at the same time as the present case and recently decided by us. In this last-named case we also had occasion to find the facts existing in the interior section of the country adjoining that bounded upon the west by Duluth, Minneapolis, St. Paul, Mankato, and other points that might be named. Substantially the same state of facts that we there found we find again in this proceeding as to rates existing between Chicago, Janesville, Mankato, and St. Peter, and it is unnecessary here to repeat them.

Rates are much lower in proportion to distance from Chicago to Janesville, Mankato, and St. Peter than they are west of St. Peter upon the line of this railroad, arising from the facts we have stated. Rates between Chicago, Janesville, Mankato, and St. Peter are considerably lower than the mere distance tariffs of the railroad in the States of Illinois and Wisconsin. The rates west of St. Peter on the line of this railroad in the State of Minnesota and the Territory of Dakota, by the general tariff of the railroad, are lower than they would be by the mere distance tariffs in Minnesota and Dakota. In quite a number of instances it has been developed by the evidence in this proceeding offered by complainant against the objection of the defendants and received by the Commission simply so far as it might bear upon the question of the reasonableness of the rates to stations on the line of this railroad in the State of Minnesota and in the Terri-



tory of Dakota west of St. Peter, that a lower rate might be obtained by a combination of the general tariff of the company from Chicago to St. Peter, with the addition of its local rate to the station named, than by its general tariff from Chicago to that station; and this we refer to, not as being a matter that is involved in this issue, or that can be corrected in this proceeding, and is entitled to be considered only so far now as it has a bearing, if any, upon the question of the reasonableness of these rates.

After leaving St. Peter, going west on the line of this railroad, its rates are graded according to distance. Very few of them appear to be grouped at stations. The usual and unavoidable result of this is that the aggregate of the rate, according to distance, grows progressively higher and the rate per ton per mile, instead of decreasing for the greater distance, increases to a considerable extent. Between the stations, as graded, according to distance, west of St. Peter in the direction of Pierre, the rate increases upon first-class freight in the following proportions:

St. Peter,	435 miles from Chicago.....	50 cents.
Courtland,	457 " " " .....	59 "
New Ulm,	469 " " " .....	62 "
Sleepy Eye,	479 " " " .....	68 "
Sanborn,	500 " " " .....	80 "
Walnut Grove,	518 " " " .....	92 "
Tracy,	525 " " " .....	94 "
Balaton,	538 " " " .....	96 "
Lake Benton	560 " " " .....	99 "
Elkton,	573 " " " .....	\$1 00
Brookings,	590 " " " .....	1 02
Volga,	596 " " " .....	1 03
Iroquois,	644 " " " .....	1 15
Huron,	662 " " " .....	1 20
Wolsey,	675 " " " .....	1 20
Miller,	702 " " " .....	1 35
Highmore,	724 " " " .....	1 50
Pierre,	781 " " " .....	1 50

The different classes of rates as to other articles are in much the same proportion.

The rates offered in evidence in this proceeding were the tariff taking effect February 14th, 1888; the rates in force March 5th, 1888, and the tariff taking effect October 28th, 1887, afterwards discontinued, and of which notice had been given by the defendant, as provided by the statute, that it proposed to restore this tariff, to take effect March 26th, 1888. From these tariffs, tables were made and offered for our consideration by the contending parties, and we have carefully examined them, as well as the tariffs complained of.

The case of petitioner rests upon the difference of the rate per ton per mile between Chicago and St. Peter and each of the successive stations west to Pierre. This method of comparison shows, of course, a great deal higher rate per ton per mile between each of the stations west of St. Peter and extending to Pierre than exists upon the distance between Chicago and St. Peter, relatively; and it is still further heightened by taking the extreme low-cut rate of twenty cents per hundred pounds on first-class freight, which existed for a short time, from Chicago to Mankato, and adding to this the local rate west, in tables of rates furnished for our consideration by petitioner, and also in insisting upon a comparison of the rate per ton per mile on this low-cut rate of twenty cents per hundred pounds between Chicago and Mankato and the respective distances between each of the stations west from St. Peter to Pierre.

The evidence shows that defendant is obliged to bring coal from the vicinity of Chicago to be used as fuel in running its trains over its lines between Chicago and Pierre. As to the country between St. Peter and Pierre, owing to the greater distance, this entails upon the defendant a very considerably larger cost of transportation in operating that portion of its road than exists upon that part of its line between Chicago and St. Peter.

The defendant's road between St. Peter and Pierre is a new road. That portion of its road between Mankato and

Tracy has been built since 1875. That part of its line between Tracy and Pierre has been built and in operation about seven or eight years. Its main line west from St. Peter to Pierre is operated through a country sparsely settled and where the volume of business is light. There is a great falling off in the volume of business over this road west of St. Peter, going in the direction of Pierre, to what it is east of St. Peter. The towns and stations along this railroad west of St. Peter indicate to some extent its scanty population. In Rand, McNally & Co.'s Business Atlas for 1887 the population of Pierre, Sanborn, and Highmore, each, is so small as not to be given at all, while the population of Huron is 164, Walnut Grove 153, Nicollet 99, Tracy 322, Sleepy Eye 1,373, and New Ulm 3,335.

That part of defendant's railway between St. Peter and Pierre is more subject to snow blockades than the portion of it east of St. Peter. The expense of keeping the road in condition and open on the portion of the line west of St. Peter in proportion to the business done is far greater than on any other part of the road. The station expenses are higher relatively on that portion of the line in proportion to the business done, and the expense, of course, is much greater in proportion as there is less amount of traffic. So far as the evidence shows, the principal articles of freight on this portion of its road are agricultural implements, wheat, and articles of that description. It is largely an uncultivated and thinly settled country.

The defendant can charge no more than it does charge to Mankato and the group of stations east of that, on its line; on account of the charges made by other competing railroads running through the same section of country between Chicago, St. Paul, Minneapolis, and Lake Superior ports.

We find that the rates established by the defendant on its line between Chicago and Pierre are neither joint nor through rates, but are local rates. We find that these rates, owing to the causes named, are, generally speaking, reasonable rates from Chicago as far west as St. Peter. We find that west of

St. Peter, and between that point and Pierre, the rates are relatively much higher, such as are often usual with railway carriers in a country thinly inhabited and but little cultivated, where the volume of traffic is light, and the cost of service in proportion to the business done is much greater than in more thickly settled sections of the country in which the volume of business is heavy.

The conclusions we have reached in this proceeding remain to be stated.

The comparison attempted by petitioner between the rates of this carrier on that portion of its line between Chicago and St. Peter, on the one hand, by a constantly decreasing rate per ton per mile, and that part of its line between St. Peter and Pierre, on the other, is one that for obvious reasons cannot be sustained. The circumstances and conditions are substantially dissimilar. The rates between Chicago and St. Peter are made by this defendant, as the shorter line from Chicago, to meet the lower rates of longer competing lines for the same business. It is compelled to meet this condition of affairs in this way or else lose the business, or sustain great financial loss. Those rates are made so low, as they are by other carriers, some of which are longer lines, competing with the defendant between the ports of Lakes Superior and Michigan for business at junction points and near competing stations on the respective competing lines. The defendant has to meet these rates by accepting them, or, in case of refusing to meet them, must sustain a large loss in losing the business they would afford, and to a share of which under any just system of rates it is fairly entitled. The volume of business here is relatively much larger than at stations from St. Peter to Pierre. All the conditions of transportation are much more favorable. The cost of transportation is far less. The snow blockades are less frequent, and do not last so long. The coal used for operating trains by defendant is transported a much shorter distance than is done to stations from St. Peter to Pierre.

In all that section of country along defendant's line from St. Peter to Pierre these conditions are materially reversed.

The conditions of transportation are very unfavorable. The cost of transportation is much greater. The volume of business is light. Local rates graded according to distance are largely a result of the situation. The subject of comparing rates in one portion of the country with rates in another, and rates upon one line with rates upon another, operated under substantially different circumstances and conditions, has repeatedly been before us, and we have uniformly held that they do not constitute a fair basis of comparison. (See *Evans and Reed v. The Oregon Railway and Navigation Company*, 1 Interstate Commerce Commission Reports, page 336; the *Business Men's Association of the State of Minnesota v. The Chicago, St. Paul, Minneapolis and Omaha Railway Company*, recently decided; the *La Crosse Manufacturers' and Jobbers' Union v. The Chicago, Milwaukee and St. Paul Railway Company*, 1 Interstate Commerce Commission Reports, page 629.)

We have also had occasion to consider the subject of the rate per ton per mile decreasing for the greater distance, as insisted on here, and we have held, as we have found, that while this is one of the incidents or elements, and, indeed, may be said to be a rule in the case of joint rates on long hauls or through rates on long hauls, unless modified by exceptional conditions of transportation, yet that it cannot, as a rule, be considered as a test in railroad operations in the case of local rates. The rates in question are the local rates of the Chicago and Northwestern Railway Company at all its stations from Chicago to St. Peter. (*Farrar & Company v. The East Tennessee, Virginia and Georgia Railway Company*, 1 Interstate Commerce Commission Reports, page 487; *Business Men's Association of the State of Minnesota v. The Chicago, St. Paul, Minneapolis and Omaha Railway Company*, 2 Interstate Commerce Commission Reports, pages 59, 60.)

Exceptional instances may, indeed, be found in the case of local rates upon one part of the line of a railroad and as between given points, which will show a decreasing rate per ton per mile for the greater distance, while the aggregate

rate is higher. Such a case was that of the local rates of the Chicago, St. Paul, Minneapolis and Omaha Railway Company between Washburn and St. Paul, as found in the complaint of the Business Men's Association of the State of Minnesota *v.* The Chicago, St. Paul, Minneapolis and Omaha Railway Company, 2 Interstate Commerce Commission Reports, page 61. Such a case is the present as to the rates by the Chicago and Northwestern Railway Company between Chicago, Mankato, and St. Peter. But every such instance is rare and exceptional, and the circumstances and conditions surrounding the transportation and causing these rates are unusual and extraordinary. In every such case as that the fact that the rate per ton per mile decreases for the greater distance, is itself an exceptional incident of an exceptional condition of affairs, and not a rule which can safely be applied to other conditions of transportation substantially different.

As to local rates, substantially different conditions generally exist, and other rules usually prevail. Local rates are as a rule graded at stations, according to distance, and occasionally stations are grouped where this can be done by giving relatively fair rates to all and without unjust discrimination. The transportation agencies of the country are made to meet each of these substantially different conditions of transportation. Where joint rates prevail on long hauls, or through rates upon long hauls, there are usually fast freight lines; there are car-loads and often train-loads, and there is a large volume of business. In the usual local business of a railroad, without regard to what its length may be, it has to properly serve all its stations, however small, and all its patrons, no matter how light or un-remunerative their business may be. For this business it has its local way freight trains, in which there is a considerable increase of expense, with their slow speed, with their stopping at every station, with their handling and delivering freight in small quantities, in packages and in parcels. The rule that the rate per ton per mile must decrease relatively for the greater distance, insisted upon in this proceeding, taking the rate from Chicago

to St. Peter as the basis and carrying it through as the standard to Pierre, is one that is inapplicable. The reasonableness or the unreasonableness of the rates between St. Peter and Pierre must be determined by considerations that are different.

The considerations that must govern in a test of the rates between St. Peter and Pierre must be such as will fairly apply to the substantial conditions and circumstances attending the service performed. They must be such as are applicable to a new railroad, recently built in a new, thinly inhabited, and largely uncultivated country, where the traffic is light and the freight is all local. It is a far interior section of the country. Freight brought to it is upon long expensive local hauls. The conditions of transportation by which it is reached are far more expensive than in localities near to the water competition of the Great Lakes. And under such circumstances the rates, as a rule, must generally be higher in proportion to distance.

The question that has given us most difficulty has been whether the rates at the stations between St. Peter and Pierre were not graded too high—that is, whether they would not be more reasonable if they were graded lower. On this feature of the case the evidence furnishes us so little light that we are unable to proceed to any intelligent determination. There is no evidence before us as to what the volume of traffic is on this portion of the line, except that it is light. How light, the evidence does not show. The inference is irresistible that it must be comparatively light when contrasted with the volume of traffic between Chicago and St. Peter. Then we are told that the country is thinly inhabited and but little cultivated. In the same connection the evidence informs us that two of its chief articles of freight are wheat and agricultural implements, each of which are articles of prime necessity, usually hauled in car-load lots and at low rates. The additional cost of service by having to transport coal from Chicago used in operating the trains is not shown. The additional cost of maintaining stations to the amount of



business done is not shown. The additional cost of service arising from snow blockades is not shown. We are unable, and at the same time we are unwilling, to pass upon the reasonableness of these rates between St. Peter and Pierre upon the meagre evidence before us.

We have instituted an elaborate comparison between the rates prevailing upon this line of the defendant and that of its leading rival and competitor, the Chicago, Milwaukee and St. Paul Railway Company, supposing that such comparison might throw some light upon this subject. For the purposes of such comparison we took that line of the Chicago, Milwaukee and St. Paul Railway Company extending from La Crosse, by way of Winnebago City, to Woonsocket, in Dakota Territory, south of and near Huron, and connecting at Woonsocket with another line of the same company which crosses the Chicago and Northwestern railway at Wolsey one hundred and six miles east of Pierre and extending thence northwest to Edgely, in Dakota Territory. This line is constructed and operated much of its way through a country that would seem to be similar in many respects to that on the line of the Chicago and Northwestern railway between St. Peter and Pierre; for a long distance it runs south of, not greatly distant from, and parallel with the defendant's line between St. Peter and Pierre, and upon its line the conditions of transportation might naturally be supposed to be in many respects substantially similar.

We found that this comparison threw no light upon the subject. On this line of the Chicago, Milwaukee and St. Paul railway we found that the Chicago rates to points of the same distance as those on the Northwestern railway between St. Peter and Pierre were relatively considerably lower, while on the other hand its local distance rates between stations were considerably higher than those of the Northwestern railway; and the combination of the two makes a higher rate on the Chicago, Milwaukee and St. Paul railway to these points than is made by a like combination of the rates on the defendant's line. We therefore will be obliged to make this



matter the subject of another and separate investigation, such as is provided for by the statute.

Another feature of the rates on defendant's line between St. Peter and Pierre, as developed at the hearing of this proceeding at Omaha, was that there was evidence offered by the petitioner tending to show that by a combination of the rate from Chicago to St. Peter added to the local rates between St. Peter and several of the stations between St. Peter and Pierre, a lower total rate would be obtained than on the direct rate from Chicago to each of these stations. These stations are, upon first-class freight, Walnut Grove, Tracy, Balaton, Lake Benton, and Highmore; upon fifth-class freight, Sleepy Eye, Sanborn, Walnut Grove, Tracy, Balaton, Lake Benton, Elkton, Huron, Miller, Highmore, and Pierre, and upon Class A, Sanborn, Walnut Grove, Tracy, Balaton, Lake Benton, Iroquois, Wolsey, Miller, and Highmore. On branches of this line there was evidence of the same character as to rates on first-class freight at Marshall and Canby; on fifth-class freight at Marshall, Canby, and Gettysburg, and on freight of Class A, at Marshall, Canby, and Watertown.

This evidence is corroborated by the tariffs of the defendant on file with us, which show this condition of affairs to exist. According to these freight may be shipped from Chicago to St. Peter at one rate, unloaded, and then subsequently re-shipped from St. Peter to each of these stations at a rate which, added to the rate from Chicago to St. Peter, is considerably less than the direct rate from Chicago to each of these stations. No reason that we are aware of exists, that could justify this anomalous condition of affairs. Still some such reason may exist under the peculiar conditions of transportation at St. Peter, and before condemning it and ordering its discontinuance we will give the defendant an opportunity to be heard respecting it in an investigation which we will inaugurate. The same condition of affairs may exist as to other classes of freight, and this investigation, as made by us, will embrace all classes of freight. The

reason for our taking this course is that the evidence upon this subject was admitted only for the purpose of the bearing it might have, if any, upon the reasonableness of rates at stations from St. Peter to Pierre, and the matters to which it directly related were not made the subject of complaint, so that the defendant could have an opportunity to answer them, but were brought forward collaterally in the evidence at the hearing for the first time.

By section 15 of the Act to regulate commerce it is provided that if in any case in which an investigation shall be made by the Commission, it shall be made to appear to the satisfaction of the Commission, either by testimony of witnesses or other evidence, that anything has been done, or omitted to be done, in violation of the provisions of the statute by any common carrier, it shall be the duty of the Commission to take the proper proceedings to put an end to such violation of law. In the case of *Smith v. The Northern Pacific Railroad Company* (1 Interstate Commerce Commission Reports, page 209), where the company in its answer admitted what was a violation of law, although the petitioner failed upon the proof to establish his complaint, yet, as the company in its answer had deliberately confessed as to another matter a violation of the statute, this established such violation clearly to our satisfaction, and we ordered the company to cease and desist from such further violation. The present case differs from that, in this, that here the company has not admitted the violation of the statute. It may be acting upon some conditions of transportation as it exists at St. Peter, which may or may not justify its action as to the differences made on direct rates from Chicago to points west of St. Peter, and the combination of the Chicago rate to St. Peter with the local rates to stations added between St. Peter and Pierre. For these reasons we will give the company a hearing on this, and the reasonableness of its rates between St. Peter and Pierre and its branch roads west of St. Peter, in a separate investigation of these matters.

All that we can decide in this proceeding now is that the rule insisted upon by the petitioner, that the rate per ton

per mile, taken as a basis between Chicago and St. Peter, must be adopted as the standard at stations between St. Peter and Pierre, and that the latter rates must decrease relatively for the greater distance in the same proportion as from Chicago to St. Peter, is one that in the existing conditions of transportation along the line of this railroad, upon the evidence in this proceeding, cannot be sustained. As the complaint is based upon this ground alone and was so tried by the parties and heard by the Commission, it results from the views we have expressed that this petition must be dismissed.

**WILLIAM C. SCOFIELD, DANIEL SHURMER, JOHN TEAGLE, AND CHARLES W. SCOFIELD, PARTNERS UNDER THE FIRM NAME AND STYLE OF SCOFIELD, SHURMER AND TEAGLE; JAMES R. TIMMINS AND ANDREW R. TIMMINS, PARTNERS UNDER THE FIRM NAME AND STYLE OF J. R. TIMMINS & Co.; CHRISTIAN J. WURWAGE, DOING BUSINESS UNDER THE NAME AND STYLE OF THE MANUFACTURERS OIL COMPANY; JOHN W. FAWCETT AND THOMAS F. WRIGHT, PARTNERS UNDER THE NAME AND STYLE OF J. W. FAWCETT & Co.; ALFRED WHITAKER, DOING BUSINESS UNDER THE NAME AND STYLE OF THE BROOKS OIL COMPANY; WILLIAM F. VLIET, WILLARD L. NUTT AND MARTIN P. CASE, PARTNERS UNDER THE NAME AND STYLE OF VLIET, NUTT & Co.; W. CARROLL LAWRENCE, FELIX BURGERT, HENRY C. MEYERS AND AUGUST E. SCHADE, PARTNERS UNDER THE NAME AND STYLE OF THE MERCHANTS' OIL COMPANY; THE EXCELSIOR REFINING COMPANY, A CORPORATION ORGANIZED UNDER THE LAWS OF OHIO; THE GLOBE OIL COMPANY, A CORPORATION ORGANIZED UNDER THE LAWS OF OHIO; THE CLEVELAND REFINING COMPANY, A CORPORATION ORGANIZED UNDER THE LAWS OF OHIO; LOUIS C. CARRAN, DOING BUSINESS UNDER THE NAME AND STYLE OF L. C. CARRAN & COMPANY, COMPLAINANTS, *v.* THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY CO., DEFENDANT.**

**Heard January 18th, 1888.—Decided July 19th, 1888.**

- 1. Upon the facts of this case it is found, and held, that there is an unlawful preference given by the carrier, in favor of oil shipments in tank-car lots, as against like shipments in barrels car-load lots, which is ordered to be corrected, and the mode prescribed by which this must be done, giving equal rates on each per pound.**
- 2. It is a common law, and charter duty, of every railway carrier subject to the Act to regulate commerce, to furnish a proper and adequate car equipment for all the reasonable needs of the business it advertises and undertakes to do, and if the carrier fails to do this, to the wrongful injury of the shipper, it is liable in damages therefor, but the statute has not clothed The Interstate Commerce Commission with the jurisdiction**

to order the carrier to furnish any particular equipment of cars, or in fact any cars at all. It is the duty of such carrier to select and furnish its own equipment of cars, under all the responsibility which the law requires of it in so vital and important a matter, for the public has not undertaken to divide responsibility with the carrier in this respect.

3. The law does not forbid a carrier from obtaining cars for the transportation of freight over its line from other carriers, or car-furnishing companies, but in every such instance the rates of freight must be exactly the same, and none other, as they would be if such cars were owned by the carrier so using them.
4. The law does not forbid a carrier from obtaining cars from a shipper for the transportation of such shipper's freight over its line, but in every such instance, after deducting a reasonable rent published in the tariff as part of the rate and paid by the carrier to the shippers for the use of such cars, the rates must be exactly the same, and none other, as upon freight transported in the same service in the carrier's own cars; and in every such transaction the carrier, at his peril, must see to it that a shipper furnishing his own cars receives no other, or different rates than other shippers who use the cars of the carrier for a similar service.
5. To render a preference of one over another unlawful, under the Act to regulate commerce, it is not necessary that it should be accomplished by any "device" and it is equally true that the ingenuity of man cannot invent a "device" for the perpetration of an unlawful preference on the part of a carrier engaged in interstate commerce, without incurring the penalties prescribed by the statute.
6. In this particular instance, on account of the phenomenal differences in expense of service rendered, the exceptionally high rates on oil in barrels less than car-load lots, as compared with oil in car-load lots are sustained, but the defendant and all other carriers engaged in interstate commerce are notified that there seems to be too great a tendency on their part to make excessive differences in favor of all shipments generally in car-load lots, as against shipments of similar articles in less than car-load lots, and that it would be well for each of them to look to their tariffs in this respect, before the Commission takes further action on this subject.

*Blanden & Buell*, Counsel for Petitioners.

*George C. Greene, Esq.*, Counsel for Defendant.

REPORT AND OPINION OF THE INTERSTATE COMMERCE COMMISSION.

BRAGG, *Commissioner* :

The complaint contains the following averments: That William C. Scofield, Daniel Shurmer, John Teagle, and Charles W. Scofield are partners under the name and style of Scofield, Shurmer and Teagle; that James R. Timmins and

Andrew R. Timmins are partners under the name and style of James R. Timmins & Company; that Christian J. Wurwage is doing business under the name and style of The Manufacturers' Oil Company; that John W. Fawcett and Thomas F. Wright are partners under the name and style of J. W. Fawcett and Company; that Alfred Whitaker is doing business under the name and style of the Brooks Oil Company; that William F. Vliet, Willard L. Nutt, and Martin P. Case are partners under the name and style of Vliet, Nutt and Company; that W. Carroll Lawrence, Felix Burgert, Henry C. Meyers, and August C. Schade are partners under the name and style of The Merchants' Oil Company; that the Excelsior Refining Company is a corporation duly organized under the laws of the State of Ohio; that The Globe Oil Company is a corporation duly organized under the laws of the State of Ohio; that The Cleveland Refining Company is a corporation duly organized under the laws of the State of Ohio, and that Louis C. Carran is doing business under the name and style of L. C. Carran & Company.

The defendant, The Lake Shore and Michigan Southern Railway Company, is a corporation organized under the laws of the State of Ohio, and has its principal office in the city of Cleveland, in said State; that it is consolidated with corporations duly organized in the States of New York, Pennsylvania, Indiana, Michigan, and Illinois, respectively; that as thus consolidated it owns and operates a continuous line of railroad from the city of Buffalo, in the State of New York, through the said city of Cleveland, in the State of Ohio, to the city of Chicago, in the State of Illinois; that said continuous line extends through and reaches places hereinafter named and others in the States of New York, Pennsylvania, Ohio, Indiana, Michigan, and Illinois; that said railway company is a common carrier upon said line of railroad, engaged in the transportation of passengers and property to and from said city of Cleveland, from and to places without said State of Ohio.

Complainants are all engaged in the business of refining, manufacturing, and dealing in petroleum and its products at

said city of Cleveland, and in pursuance of said business ship their goods over defendant's said line of railroad to places without said State of Ohio reached by said line of road, its branches and connections.

1st. The defendant has established and published a schedule showing the rates and charges for the transportation of petroleum and its products in barrels upon its said railroad, in car-load lots and in less than car-load lots, and which is now in force thereon. Said rates and charges for less than car-load lots are excessive, unjust and unreasonable; and as evidencing and illustrating said allegations of excessiveness, injustice and unreasonableness, they show that said rates in car-load lots and in less than car-load lots from said city of Cleveland to the places named are as follows, viz.:

	In car-load lots, per barrel.	Less than car-load lots, per barrel.
To Chicago, in the State of Illinois.....	50 cts.	\$1 00
To Grand Rapids, in the State of Michigan...	50	1 00
To Kalamazoo, in the State of Michigan.....	40	92
To Detroit, in the State of Michigan.....	30	64

2d. The defendant has established and published a schedule showing the rates and charges for the transportation of petroleum and its products in barrels in car-load lots, and in bulk in tank cars upon its said railroad, which is now in force thereon. Said rates and charges for transportation in barrels in car-load lots are excessive, unjust, and unreasonable; and as evidencing and illustrating said excessiveness, injustice, and unreasonableness they show that said rates and charges in barrels in car-load lots and in bulk in tank cars from said city of Cleveland to the places named are as follows, viz :

	Car-load lots in bulk in tank cars, per barrel.	Car-load' lots in bar- rels, per barrel.
To Chicago, in the State of Illinois.....	38 cts.	50 cts.
To Detroit, in the State of Michigan.....	22 cts.	30 cts.
To Buffalo, in the State of New York .....	25 cts.	34 cts.
To Kalamazoo, in the State of Michigan...	35 cts.	46 cts.

3d. The defendant has established and published a schedule of rates and charges for the transportation of petroleum and its products in barrels in car-load lots and in less than car-load lots upon its said railroad, and which is now in force thereon. Said rates and charges constitute and are an undue and unreasonable preference and advantage to the said traffic in car-load lots, and an undue and unreasonable prejudice and disadvantage to said traffic in less than car-load lots; and as evidencing and illustrating said undue and unreasonable preference and prejudice and disadvantage, respectively, they show that the said rates and charges in car-load lots, and in less than car-load lots, respectively, from said city of Cleveland to the places named are as follows, viz:

	In car-load lots, per barrel.	Less than car-load lots, per barrel.
To Chicago, in the State of Illinois.....	50 cts.	\$1 00
To Grand Rapids, in the State of Michigan...	50 cts.	1 00
To Kalamazoo, in the State of Michigan.....	40 cts.	92
To Buffalo, in the State of New York.....	34 cts.	56
To Detroit, in the State of Michigan .....	30 cts.	64
To South Bend, in the State of Indiana.....	42 cts.	92

4th. Defendant has established and published a schedule of rates and charges for transportation of petroleum and its products in bulk in tank cars and in car-load lots in barrels, and in less than car-load lots in barrels upon its said railroad, and which is now in force thereon. Said rates and charges constitute and are an undue and unreasonable preference and advantage to the said traffic in bulk in tank cars and an undue and unreasonable prejudice and disadvantage to said traffic in car-load lots in barrels and in less than car-load lots in barrels; and as evidencing and illustrating said undue and unreasonable preference and prejudice and disadvantage, respectively, they show that the said rates and charges in bulk in tank cars and in car-load lots in barrels and in less than car-load lots in barrels, respectively, from said city of Cleveland to the places named are as follows, viz:



	In tank-cars, per barrel.	In barrels in car-load lots, per barrel.	In bbls. less than car-load lots, per bbl.
To Chicago, in the State of Illinois.....	38 cts.	50 cts.	\$1 00
To Buffalo, in the State of New York.....	25	34	56
To Detroit, in the State of Michigan.....	22	30	64
To Grand Rapids, in the State of Michigan	38	50	1 00
To Kalamazoo, in the State of Michigan....	35	46	92
To South Bend, in the State of Indiana.....	31½	42	92
To Elkhart, in the State of Indiana .....	31½	42	88
To Erie, in the State of Pennsylvania .....	22	30	54

5th. The defendant has established and published a schedule of rates and charges for the transportation of petroleum and its products in barrels in car-load lots and in less than car-load lots from said city of Cleveland to places without and beyond the State of Ohio, reached by its said line of railroad, and which is now in force thereon; that as a part of said schedule of rates and charges it is provided that a minimum car-load in barrels shall be sixty barrels. The rates and charges per barrel for less than car-load lots as thus established is from fifty to one hundred and fifty per cent. higher than the rate in car-load lots. The floor capacity of defendant's cars, in which said commodities are transported in barrels, is from forty-eight to not more than fifty-three of said barrels, and for the transportation of said commodities when transported in said cars to the full floor capacity thereof, and in quantities less than sixty barrels, defendant charges the less than car-load rates for each barrel. In order to transport in each of said cars sixty barrels of said commodities it becomes and is necessary that those barrels in excess of the floor capacity be placed upon the top of those upon the floor, which cause leakage and damage to the barrels thus placed above and below, which said leakage and damage is by said schedule entirely at the risk of the owner. Said regulation of said schedule, fixing sixty barrels as a minimum car-load, is unjust and unreasonable; and the charge per barrel at said less than car-load rates on the full floor capacity of the car when that is less than sixty barrels, is excessive, unjust, and unreasonable.

6th. Defendant has established and published a schedule

of rates and charges for the transportation of petroleum and its products in bulk in tank cars, and that it transports a large quantity of said commodities at said rates in said tank cars; that defendant fails and refuses to furnish to complainants the tank cars necessary to ship said commodities at said rates, according to said schedule, and defendant refuses to furnish the apparatus, facilities, and appliances needful to load and unload said commodities transported and to be transported in bulk in said tank cars; that said defendant rebates from its said schedule rates and charges to shippers furnishing said tank cars a mileage allowance of three-fourths of a cent for each and every said tank car so furnished by shippers. Said defendant in its said schedule charges for the transportation of said commodities in said tank cars a less amount than it charges for the transportation of said commodities in barrels, and that said less amount, in combination with said mileage allowance, constitutes and is an undue and unreasonable preference and advantage to the said traffic in bulk in tank cars over the said traffic in barrels, and constitutes and is an undue and unreasonable prejudice and disadvantage to said traffic in barrels.

7th. The Standard Oil Company is a corporation duly organized under the laws of the State of Ohio, with its principal office in the city of Cleveland and in said State, and is engaged in the business of refining, manufacturing, and dealing in petroleum and its products, and ships said commodities in tank cars in the manner aforesaid over defendant's said railroad from said city of Cleveland to places thereon without the State of Ohio at said rates.

That the facts, acts, and omissions of defendant hereinbefore set forth in the complaints numbered, respectively, from one to seven, inclusive, separately and in combination, all and singular, constitute and are, and by defendant are designed to be, a device whereby defendant charges, demands, collects, and receives from said Standard Oil Company a less sum for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions than it charges,

demands, collects, and receives from complainants therefor; and whereby defendant makes and gives and intends to make and give an undue and unreasonable preference and advantage to said Standard Oil Company in the transportation of said commodities, and subjects and intends to subject complainants to an undue and unreasonable prejudice and disadvantage in the transportation of said commodities.

By way of general averment and as additional and supplementary to each and every of the above stated and numbered complaints and for brevity of statement complainants attach hereto the several schedules of rates and charges of the defendant above referred to and make the same a part hereof and of each and every of said complaints stated and numbered as aforesaid.

That petroleum and its products herein referred to are, by the classification adopted by the defendant and in force upon its said line of railroad, classed as third class and charged accordingly upon a computation of four hundred pounds weight for each and every barrel when transported in less than car-load lots.

The prayer of the petition is that the Commission investigate the charges and complaints herein preferred, and if said acts and omissions complained of are found to exist and to be unlawful the Commission will order and direct said defendant to desist from and cease such unlawful acts and omissions, and for all such further action, order, and finding in the premises as to the Commission may seem just and right.

To the foregoing complaint the Lake Shore and Michigan Southern Railway Company answered as follows:

1st. It admits the allegations contained in the petition touching the complainants, copartnerships, and incorporations, and the incorporation of the respondent, and that respondent owns and operates a railroad as a common carrier, as alleged in said petition, and that complainants are engaged in business and ship some of their goods as alleged.

2d. It admits that it has established and published schedules showing the rates and charges for the transportation of petroleum and its products in barrels upon its railroad in car-load lots and in less than car-load lots and in bulk in tank cars, as alleged in the complaints numbered 1 to 4, both inclusive, in said petition; but it denies that said rates and charges for less than car-load lots or for the transportation in barrels in car-load lots are excessive, unjust, or unreasonable, or that said rates and charges or any of them constitute or are an unjust or unreasonable preference and advantage to the traffic in car-load lots, or that said rates and charges constitute and are an undue and unreasonable preference and advantage to said traffic in bulk in tank cars, or an undue and unreasonable prejudice and disadvantage to the said traffic in car-load lots in barrels. On the contrary, it alleges that the rates aforesaid are just and reasonable and are fixed and adjusted fairly and equitably; that the circumstances and conditions under which such transportation is made in barrels in less than car-load lots, in barrels in car-load lots, and in tank cars are essentially dissimilar and unlike, and warrant and justify the difference in rates and charges which has been made in the tariffs of the respondent.

3d. It admits that it has established and published a schedule of rates and charges, as alleged in the 5th complaint in said petition, and that it has provided that a minimum car-load in barrels shall be sixty barrels, and alleges that the rates and charges for less than car-load lots are fixed and established by the tariffs and schedules, a copy of which is attached to said petition, and not other or different.

It alleges that the capacity of respondent's cars, in which said commodities are transported in barrels, is ample for the proper loading and transportation of sixty barrels and upwards, and that if properly loaded the placing of some of the barrels upon others does not produce leakage or damage to the barrels.

It denies that the regulation fixing sixty barrels as a minimum car-load is unjust or unreasonable, or that the charge

per barrel at less than car-load rates on the full floor capacity of the car, when that is less than sixty barrels, is excessive, unjust, or unreasonable.

4th. It admits that it has established and published a schedule of rates and charges for the transportation of petroleum and its products in bulk in tank cars, as averred in the 6th complaint in said petition, and that it transports a large quantity thereof at the said rates in tank cars. It alleges that it does not now and never has owned and supplied to any shipper any of such tank cars since the year 1880, or the apparatus, facilities, and appliances needful to unload said commodities transported and to be transported in said tank cars, and that none of the complainants has ever applied to or requested this respondent to furnish such cars, or such apparatus, facilities, or appliances for their use, nor has respondent refused to furnish the same; that all tank cars hauled over respondent's road have been furnished by shippers who own and maintain the same, and the facilities, apparatus, and needful appliances for loading and unloading the same, and that respondent has allowed to such shippers for the use of such tank cars a reasonable sum, viz., a mileage of three-fourths of a cent a mile for each mile each such car is hauled over respondent's road by this respondent, and is and ever has been ready and willing to afford said complainants the same facilities, and upon the same terms receive and haul tank cars for them and transport for them therein petroleum and its products in bulk, and has never refused to do so.

It denies that the less amount it charges for such transportation in tank cars in combination with said mileage allowance constitutes or is an undue or unreasonable preference and advantage to the said traffic in bulk in tank cars over the said traffic in barrels, or is an undue and unreasonable prejudice and disadvantage to said traffic in barrels.

5th. It admits, in answer to the 7th complaint contained in said petition, that the Standard Oil Company is a corpo-

ration engaged in business and ships said commodities in tank cars, as alleged, and that said Standard Oil Company also ships over respondent's railroad from Cleveland to places within and without the State of Ohio petroleum and its products in barrels in car-load lots and in less than car-load lots. It admits that the several schedules of rates and charges attached to said petition are those referred to in said petition, and are correct and true, and that petroleum and its products are by the classification adopted by this respondent and in force on its road classed as third-class freight and charged accordingly upon a computation of four hundred pounds for each barrel when transported in barrels in less than car-load lots.

The respondent denies each and every allegation in said 7th complaint contained which is not herein specifically answered or admitted.

And respondent prays that the petition may be dismissed.

#### STATEMENT OF FACTS FOUND.

The defendant has established and published a schedule of rates and charges for the transportation of petroleum and its products in car-load lots in barrels, in less than car-load lots in barrels, and in tank cars from points to points named in the complaint at the rates therein specified. According to these schedules it is provided that a minimum car-load in barrels shall be sixty barrels.

There are as many as twenty or more different kinds of oils produced at Cleveland. These oils are divided into two general classes, namely, illuminating oils and lubricating oils. The bulk of lubricating oils is worth in the market at Cleveland from 25 to 75 cents per gallon, according to quality, and illuminating oils are worth in the same market from 7 to 11 cents per gallon, according to quality. There is a very large market for lubricating oils in Kansas, Nebraska, and other northwestern States, though these oils are also shipped in large quantities to other portions of the country. The illuminating oils find a general market in this country. Lubri-

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cating oils are used chiefly in the late spring and during the warm weather in the summer and early fall, and illuminating oils are used principally in the winter and during the cold weather. Shipments of these oils are made chiefly at and for the seasons when they are most used, respectively.

Cleveland, Ohio, a station on the line of defendant's railroad, situated upon Lake Erie, is the initial point of shipment of nearly all the petroleum oil and products thereof carried on defendant's road. The quantity of such oil and products shipped over defendant's road in a westerly direction from Cleveland is at the rate of eight hundred thousand barrels annually, and eastward about six thousand barrels annually. Nearly all of this oil and its products are refined and manufactured at Cleveland. Petroleum and its products herein referred to are, by the classification adopted by the defendant and in force upon its line of railroad when transported in barrels in less than car-load lots, classed as third class and charged accordingly upon a computation of four hundred pounds weight for each and every barrel. When shipped in car-load lots, whether in tanks or in barrels in stock cars, it is practically sixth-class.

The Standard Oil Company is a corporation organized under the laws of the State of Ohio and has its principal office in the city of Cleveland, in said State, and is engaged in the business of refining, manufacturing, and dealing in petroleum and its products on an extensive scale. It ships these commodities, to a large extent, in tank cars from the said city of Cleveland to places that are without the State of Ohio at the rates prescribed in defendant's schedules for tank cars. About eighty per cent. of said Standard Oil Company's west-bound and less than three per cent. of its east-bound shipments over defendant's road, are in tank cars furnished by said Standard Oil Company, which also furnishes its own facilities and appliances for loading and unloading. The mileage allowed by defendant to all shippers furnishing tank cars or stock cars for shipments of oil upon its road in car-load lots is three-fourths of one cent per mile



per car for the use of these cars. This is the usual mileage paid by the railroads for the use of cars belonging to others. All of said tank cars after being unloaded at their destination, are returned as a rule to Cleveland, empty, by the defendant, and the mileage of three-fourths of a cent per mile is paid on such return, as is usual in other cases.

The petitioners, Scofield, Shurmer and Teagle, the Excelsior Oil Company, and J. W. Fawcett, three of the complainants, also ship oil and its products, in part, over defendant's road to some extent in tank cars owned and furnished by themselves, and they are allowed the same mileage therefor as above stated, and said tank cars are likewise returned empty and mileage paid on said return as aforesaid. From many points, but notably Chicago, the chief point to which oil is shipped from Cleveland, the stock cars have return loads a considerable portion of the time. The other petitioners own no tank cars.

Oil shipped in bulk in tank cars or in car-load lots barrels is loaded and unloaded in each instance by the shipper and consignee, and the carrier pays the switching charges in order to obtain this freight. Oil transported in less than car-load lots is loaded and unloaded by the railway company. The weight of an empty oil barrel in summer when dry is 63 pounds; in winter it is 65 pounds. The average weight of oil in each barrel would be, if the barrel were full, about 335 pounds; but as there is some space allowed in each barrel for expansion, the usual average rate of oil in a barrel is estimated at 325 pounds. Bulk oil is usually unloaded from the tanks at the stations into receiving tanks, but occasionally is unloaded by pipes into barrels. The defendant provides no such receiving tanks at its stations. The Standard Oil Company has receiving tanks at the stations named in the schedule thereof mentioned in the complaint and at other points of importance, generally, where it does business; and these receiving tanks are furnished and maintained at its own expense and upon its own premises. Oil in barrels, whether in car-load lots or in less than car-load lots, is transported



over defendant's road westwardly exclusively in cattle and stock cars. Oil in tank cars is rated at 315 pounds per barrel.

The average weight of a tank car is 22,100 pounds, which, with the average of ninety barrels, that being the lowest minimum hauled in tank cars on this road, makes 28,350 pounds, or a total of 50,450 pounds, for which the defendant receives from Cleveland to Chicago, a distance of 357 miles, \$34.20, being at the rate of \$1.36 per ton. The average weight of a stock car is 21,046 pounds, which, with sixty barrels of oil, that being about the average carriage, weighing 24,000 pounds, makes a total weight of 45,046 pounds, and the earnings upon such a car from Cleveland to Chicago over defendant's road is \$30, being \$1.33 per ton. The tank car, taking the gross weight of the car and the oil, pays slightly more to the defendant per ton than the stock car with the full load. The average number of barrels on west-bound shipments of oil from Cleveland over defendant's road in stock cars is 61, but on east-bound shipments the number per car runs more than this, and sometimes reaches as much as eighty barrels per car. The average number of barrels of oil transported in a tank car is about ninety-six. The smallest of these tank cars carry about ninety and the largest about 120 barrels per car, and they are constantly being increased in size.

The complainant's aggregate shipments west-bound over the Lake Shore road are at the rate of 36,000 barrels annually, and east-bound about 3,200 barrels annually. Between April 5, 1887, and October 1, 1887, the complainant's shipments of oil over the several roads from Cleveland were distributed as follows:

Pennsylvania .....	54.7	per cent.
C. C. C. and I.....	18.7	"
Lake Shore and Michigan Southern .....	15.8	"
New York, Pennsylvania, and Ohio.....	10.8	"

More than one-fourth of the shipments made by those of the petitioners owning tank cars were made over the Penn-

sylvania railroad in their own tank cars. The oil rates upon all the railroads from Cleveland to Chicago are the same.

During the period between April 1 and October 1, 1887, the Standard Oil Company shipped over defendant's railway in less than car-loads in barrels 9,824 barrels; in car-loads in barrels 75,075, and in tank cars 319,860 barrels. About thirty-five per cent. of these shipments by the Standard Oil Company in barrels was made to Chicago as compared with its shipments in tanks. During this period the Standard Oil Company shipped its 75,075 barrels in 1,226 car-loads in stock cars and its 319,860 barrels in 3,579 tanks, while during the same period the independent refineries shipped 4,633 barrels in 55 tanks in tank-loads. The total number of barrels shipped by the Standard Oil Company during this period over defendant's road appears to have been 395,919 barrels. During the same period all the other shippers shipped over defendant's road in less than car-load lots 8,346 barrels. The oil shipped in barrels out of Cleveland during this period in less than car-load lots appears to have been an average of between sixteen and seventeen barrels per car west and thirteen and four-fifths barrels per car east.

Since the business of refining oil at Cleveland commenced the business of defendant has changed very much. About ten years ago the volume of its business was east-bound and the returning cars to the west were largely empty. There was very little in the way of loads for stock cars. The stock cars were thus practically used and nearly altogether for oil. Now the conditions of shipments are largely reversed. Eastbound shipments of live stock on defendant's road are greatly less than they were then, and this decrease has been existing since 1879. In 1879 the shipments from Chicago were 279,058 tons over defendant's road; in 1880 it was 81,881 tons; in 1881 it was 62,057 tons; in 1882 it was 202,740 tons; in 1883 it was 208,167 tons; in 1884 it was 176,530 tons; in 1885 it was 189,530 tons, and in 1886 it was 193,547 tons. Taking the years 1879 and 1886 by way of comparison and it shows a decrease of 85,511 tons or 7,000 cars of live stock from Chicago alone. Besides oil there has also of recent

years been an immense traffic developed in west-bound freights over defendant's line in coal and coke.

While it is true that there has been a considerable falling off in the live stock shipments east over defendant's road in the last ten years, yet, still, this is a large business. There is enough of it, taken in connection with other freight, such as is usually shipped in stock cars, to furnish return loads to defendant's stock cars a large portion of the time on their return trips from Chicago to Cleveland. On the other hand, it does not appear that there are any return loads of freight from Chicago to Cleveland in tank cars.

When oil is shipped in barrels in less than car-load lots there are but few articles that can be placed in the same car with it. Any other freight placed in the same car must be such as will not absorb the smell of the oil or be damaged by its leakage. There are four handlings of freight when oil is shipped in barrels in less than car-loads. It is unloaded on the platform; it is loaded on the car and goes forward as way freight; it is handled at the different stations on the platform when taken from the train, and then from the platform to the team. A separate receipt, a separate bill of lading, and a separate way bill have to be made out for each barrel if shipped to only one consignee, and where there are several shipments all in a car in less than car-load lots there is as much clerical work in the case of each shipper and each consignee as there would be in the case of only one shipper and one consignee for an entire car-load. A car-load of oil can go forward on any train, but is generally sent on a through train. Less than car-load lots are always shipped in way freight trains, which stop generally at every station along the road.

The Standard Oil Company has stock cars of its own as well as tank cars, which are used in the defendant's business, and upon which defendant pays a mileage rate as above stated. Whether any of the petitioners have such stock cars is not shown by the evidence. The average oil train on defendant's road consists of thirty stock cars or tank cars. The

weight of oil is based on the standard of six and one-half pounds for refined oil and five and three-fourth pounds per gallon for naptha and gasoline, and seven pounds and upwards per gallon for lubricating or black oil. It does not appear from the evidence that any of the complainants have made any demand on the defendant for tank cars to transport their oil. No shipper seems ever to have made such demand upon the defendant until very recently, and as we infer from the evidence, since the filing of this complaint.

The crude capacity of the petitioners Scofield, Shurmer, and Teagle is about 250,000 barrels a year. Their daily capacity is about 1,200 barrels. The Standard Oil Company is by far the largest refiner and shipper engaged in this business at Cleveland, according to the evidence before us.

The evidence shows that the production of these oils can be made at a much less cost by a large refiner having a capacity of one thousand barrels per day or more than by a small refiner having far less capacity. This difference is from one-half to three-fourths of a cent per gallon.

None of the petitioners have the capacity of making these oils at this minimum cost except Scofield, Shurmer, and Teagle. The Standard Oil Company has the capacity to make and does make these oils at this minimum cost. Shippers of oils in barrels, car-load lots, cannot compete successfully as against shippers in tank cars at the rates furnished by defendant to the principal points reached by its lines in the States of Illinois, Indiana, and Michigan.

The refineries are located at Newburgh, a suburb of Cleveland, and when a stock car is furnished to them to be loaded with barrels of oil it takes five days, on an average, for it to be loaded and returned to the defendant. This delay is caused by the switching over the Cleveland and Pittsburgh railroad, an opposition line. Oil in barrels in less than car-load lots is brought by the shipper to the oil sheds of the defendant and is loaded on the cars at once. Stock cars furnished by the defendant to the Standard Oil Company are loaded by that company at its refineries and returned to the

defendant in from 24 to 48 hours. The differences in the rates of defendant upon these shipments are not based on any of these considerations.

Up to the time that the Act to regulate commerce went into effect the rate of the defendant on barrels of oil in car-loads was sixty cents per barrel from Cleveland to Detroit, and on less than car-loads seventy cents per barrel. The present rate is thirty cents per barrel on car-loads, and on less than car-loads sixty-four cents per barrel. Relatively much the same differences on oil in barrels in car-load and in less than car-load shipments are made to other points. The ground assigned for this by the carrier is that prior to April 5, 1887, it had been doing this business "in a haphazard sort of way, and after that it was necessary to make rates harmonious with the various interests and commodities along its road." It is also claimed by the carrier that this change was made necessary by the fact that it had been carrying oil in barrels in less than car-loads too low prior to April 5, 1887.

Small shipments of oil, less than car-load lots, are usually shipped by the defendant in single-decked stock cars. As a rule the defendant always ships promptly oil in less than car-loads the day it is received, if it has cars, no matter how small the number of barrels may be; but if it has not enough cars, then on the next day. It takes about twice as long to get freight through to destination from point of shipment in less than car-loads than in car-loads.

The reasons assigned by the defendant for having no tank cars of its own are, in substance, that if it owned such tank cars the party who does the largest shipping over its road (the Standard Oil Company) would give it no work for such tank cars, and then it would be dependent on other shippers who get their crude oil over other roads than the defendant's, and in consequence give their shipments back to the companies to get their crude oil, and therefore that the defendant would have its equipment of tank cars on its lines for six months of the year doing nothing.

The crude oil used by the refineries at Cleveland is brought from the oil region of Pennsylvania. The estimate is that from 2,400,000 barrels to 3,000,000 barrels of this crude oil is thus brought from the oil fields of Pennsylvania annually to Cleveland to be refined. The greater portion of this crude oil is brought to Cleveland by a pipe line owned and controlled by the Standard Oil Company. A portion of this crude oil is brought from the oil fields to Cleveland by the Pennsylvania system of roads. The defendant has a railway line from Cleveland to Oil City, in the oil region of Pennsylvania, but for the last five years or more has not been engaged in the business of hauling crude oil from the Pennsylvania oil fields to Cleveland. All of the petitioners, except the Brooks Oil Company, receive their crude oil chiefly from the pipe line. The Brooks Oil Company receives its crude oil from the vicinity of Parkersburg and Oil City entirely by tank cars of the Valley road. There has been a considerable demand upon the defendant for shipments of crude oil from the Pennsylvania oil fields to Cleveland. It makes a rate for this of 25 cents per barrel while the pipe line only charges 20 cents a barrel. It was conceded by petitioners' counsel upon the hearing, that this pipe line is not a common carrier.

The territory east of Cleveland receives its supply of refined oil chiefly from the east. There are refineries at Oil City, Buffalo, Philadelphia, Pittsburgh, and New York. There is a pipe line from the oil regions of Pennsylvania to the seaboard, and it is owned and controlled by the Standard Oil Company.

The shipments west over defendant's line in stock cars are largely made up of anthracite coal and pig-iron from Buffalo, anthracite coal from Erie, and Coke from Ashtabula. The shipments of these classes of freight over it, west, are so large that they often exceed the capacity of the defendant to furnish the requisite cars for their transportation.

#### CONCLUSIONS AND OPINION OF THE COMMISSION.

The questions arising upon this complaint (are several in number) and may be stated briefly and substantially in the following order:

1. The difference between barrel rates in less than car-load quantities and barrel rates in car-load lots.

2. The difference in rates between oil in car-load lots in barrels and oil in car-load quantities in tanks, and whether the combination of the difference in favor of tank-car rate with the mileage allowed the shipper for the use of the tank cars, operates to produce a prejudice and disadvantage to the shipper of oil in barrels in car-load lots or less than car-load lots that is obnoxious to the statute.

3. Whether or not it is the duty of the carrier to furnish tank cars as a part of its equipment which can be enforced by order of the Interstate Commerce Commission or upon its recommendation under the Act to regulate commerce.

I. Reasons that are substantial exist for making the rate lower per barrel in car-load lots than in less than car-load quantities. The cost of service is very considerably less in the case of shipments in car-load lots than in less than car-load quantities. We have had occasion to pass upon this frequently, but the evidence here requires us to do so again. The shipment by the car-load goes direct to destination. It is loaded by the shipper and is unloaded by the consignee. The freight in it does not stop at the way stations to be handled in parcels to different consignees along the line. Only one bill of lading is made. It requires but one entry upon the way-bill. The time occupied in transporting it to destination is far less than in the case of a shipment in less than car-load quantities. There is but one collection of charges for freight. All of these reasons apply with the same force whether the shipment be in a tank or in barrel shipments in car-load lots.

Where the shipment is made in less than car-load quantities a separate receipt or bill of lading has to be given to every shipper for his parcel. A separate entry for every item has to be made on the way-bill. The shipment is by a local freight train which stops at every station for which there is a package of freight. The freight has to be taken out in parcels and delivered at each of these stations. The



freight is loaded and unloaded by the railroad company. There are as many collections of charges for freight as there are different parcels. The time occupied in transporting it is usually from two to three times as long as in the case of a car-load shipment—according to distance. It occupies a whole car, and for the vacant space in that car the company is receiving no compensation. There is also a considerable element of danger attending the handling of barrel oil in small lots which are unloaded by the carrier and stand in the local station-houses, whereas car-load lots are usually unloaded by the consignee at a distance from the depot building and immediately removed from the premises of the railroad company. All these facts show that a reasonable difference can and should justly be made between shipments in car-load lots and less than car-load quantities. A reason, additional to these named, is urged by the carrier and sustained by the evidence in the present case. It is that there are very few articles of freight that can be shipped in the same car with oil in barrels. The force of this is seen at a glance and it renders this a service that is phenomenal in its expensiveness to the carrier. As thus transported, oil in barrels less than car-load lots is not ordinary but extraordinary freight. Taken in connection with all the features of this traffic, it is indeed an exceptionally expensive service on the part of the carrier, and high as the rates are on oil in barrels less than car-load lots, and we must say that they are very high, almost so high that it seems to us that they are in their nature prohibitory, yet we cannot upon all the evidence say that they are unreasonable or excessive. This result, however, arises from the peculiar character of the freight stated. It is proper to say in this connection that the defendant as a carrier performs this service promptly at an exceptionally large cost of outlay, and that the rates charged for it cannot fairly be measured by the standard of other freights where substantially different conditions, to a very remarkable extent, exist.

The extraordinary differences made by this carrier between barrel shipments in car-load lots and less than car-load lots,



which we have had occasion to consider and have sustained, require that we should notice this subject at more length in its general features. Since the Act to regulate commerce went into effect, carriers have generally reduced their rates in shipments in car-load lots considerably and have made these rates lower than they were prior to April 5, 1887; while, on the other hand, shipment of articles in less than car-load lots have, as a rule, shared no such corresponding reduction, and have in many instances been made higher. By means of this large shippers have advantages in rates over small shippers, if not to the same extent as they did by rebates and special rates before the enactment of the Act to regulate commerce, yet still to a very large extent. There is evidence in this case strongly tending to show that the defendant is no exception to this rule. Strong reasons exist, and these we have sustained, why the car-load as a unit should be upheld, but there are equally strong reasons why carriers should not make the differences so great between shipments in car-load lots and less than car-load lots and why they should recognize equitable considerations in a subject of such great importance. The business of the country renders it necessary that a vast majority of the shipments of freight must be made in less than car-load quantities, and rates amounting to a penalty upon this class of freight, and so high as to be almost prohibitory in their nature, cannot be sustained. These are the views of the Commission upon this general subject, and it would be well for every carrier subject to the Act to regulate commerce to forthwith consider its tariffs in this respect, and to carefully determine whether it has not gone too far in the differences it has made between car-load lots and less than car-load lots before the Commission shall take further action upon this subject.

II. The charge made by the carrier, as shown by the evidence in this proceeding, is not the same for a car-load, whether it be in barrels or in tanks, without regard to weight. In this respect it differs to some extent from other cases that have been before us. It also differs from other cases we have considered, in this: that it is admitted that there is no

return load in tank cars from Chicago to Cleveland. The tank cars, after transporting the oil from Cleveland to Chicago and to other points named in the complaint, as shown by the evidence, are brought back empty to Cleveland by the carrier. These tank cars are not owned by this railroad company. They belong in every instance to the shipper, who is the refiner of the oil. Several of the petitioners own these tank cars in small numbers. The Standard Oil Company owns them in large numbers. Whether the oil is shipped in car-load quantities in tanks or in barrels, it is loaded by the shipper and unloaded by the consignee. The average number of barrels of oil hauled in a tank car is ninety-six barrels on west-bound freight from Cleveland, and in an ordinary stock car the number of barrels is sixty-one to the same points. Besides its tank cars the Standard Oil Company owns a large number of stock cars, which are used by the defendant in this business, and for which it pays the Standard Oil Company, and to others who furnish such stock cars, three-fourths of a cent per mile going to and returning from destination. This is the usual rate paid by railroads in this country for the exchange of cars. It appears from the evidence that the oil in a barrel in barrel shipments is rated by the carrier at 325 pounds of oil, while a barrel of oil in tank-car shipment is rated at 315 pounds per barrel. We do not understand why this difference should exist, though no particular importance appears to attach to it either way, and certainly not in the conclusions that we have reached.

The charges made by the defendant in car-load lots in tank cars per barrel and in car-load lots in barrel per barrel are, from Cleveland:

	Car-load lots in bulk in tank cars, per barrel.	Car-load lots in barrels, per barrel.
To Chicago, in the State of Illinois.....	\$0 38	\$0 50
To Detroit, in the State of Michigan.....	22	30
To Buffalo, in the State of New York.....	25	34
To Kalamazoo, in the State of Michigan...	35	46

The following table shows the relative earnings and rates on oil shipped in barrels and in tank cars from Cleveland, Ohio, to various points named on the Lake Shore and Michigan Southern railway in car-load lots: \*

\* Statement Showing the Relative Earnings on Rates on Oil Shipped in Barrels and in Tank Cars from Cleveland, Ohio, to Various Points on Lake Shore and Michigan Southern Railway.

From Cleveland, Ohio, to—	Rates per barrel.		Freight Earnings per car.				Rates per 100 pounds.			
	Distance from Cleve-land—miles.	In tank cars.	In box or stock cars.	In tank cars.	Mileage allowance not deducted.	Mileage allowance deducted.	In tank cars.	In box or stock cars.	Box-car rate in excess of tank-car rate, mileage included.	Box-car rate in excess of tank-car rate, mileage deducted.
Chicago, Ills .....	357	38c.	50c.	\$34 20	\$28 84	\$30 00	\$4 20	\$1 16	12.06c.	10.17c.
Buffalo, N. Y.....	183	25c.	34c.	22 50	19 75	20 40	2 10	65	7.94c.	6.96c.
Detroit, Mich.....	178	22c.	30c.	19 80	17 13	18 00	1 80	87	6.98c.	6.42c.
Grand Rapids, Mich...	332	38c.	50c.	34 20	29 22	30 00	4 20	78	12.06c.	10.31c.
Kalamazoo, Mich .....	274	35c.	46c.	31 50	27 39	27 60	3 90	21	11.11c.	9.66c.
South Bend, Ind.....	270	31½c.	42c.	28 35	24 30	25 20	3 15	90	10.00c.	8.57c.
Elkhart, Ind.....	255	31½c.	42c.	28 35	24 52	25 20	3 15	68	10.00c.	8.65c.
Erie, Pa.....	95	22c.	30c.	19 80	18 37	18 00	1 80	37	6.98c.	6.48c.

NOTES.—The bases for computation are as follows:—  
 Weight of oil in barrel, 325 pounds.  
 Mileage deductions are on the basis of ¾ of one cent per mile, both directions.  
 Weight of barrel oil in tank, 315 pounds.  
 Number of barrels of oil in box or stock car, 60.  
 Number of barrels of oil in tank, 50.

It is thus seen from the subjoined table in the note that

in every instance a large difference is made in the rate per barrel in favor of oil in tank cars as against oil in barrels in car-load lots. This, too, when, as the evidence shows, there is frequently return freights from Chicago to Cleveland for stock cars and no such return loads for tank cars. There is no just and substantial ground for this difference, so far as we can see. By this arrangement the carrier hauls in one tank car ninety barrels of oil as the lowest minimum and in a stock car sixty barrels as the minimum. Beside the large differences made in favor of oil per barrel in the tank car as against oil per barrel in the stock car, each being in direct competition, whenever there is a return load for the stock car the actual revenue would be proportionately greater to the carrier upon the entire transaction from the stock car than from the tank car. The preference thus given to oil shipped in tank cars as against oil shipped in stock cars in car-load lots is, we think, unlawful, and must be regarded as forbidden by the Act to regulate commerce. The defendant should carry the same weight for the same price in the one car as in the other, and the rate should be made by the hundred pounds instead of by the barrel.

The element in this transaction that produces this large difference in rates is the tank. It confers an advantage upon the shipper who uses it, transporting from one-third to twice as much oil more than is shipped by the shipper in the stock car, with but little difference in the aggregate car rate for this large excess of oil. The tank is indeed the car, but in renting it from the shipper to haul his own oil the carrier pays him for furnishing a package for the oil, charges him nothing for the increased dead weight of the tank over and above that of the stock car, which upon an average is one thousand pounds, and pays him rental for hauling the empty tank car back to him as part of the transaction. The shipper of oil in car-load lots in barrels pays for the full weight of the barrel in every instance, as well as the oil, and furnishes the barrels himself, and if his barrels are hauled back to him he has to pay for that service as upon other freight. The inequalities of the transaction are very great, and they are

all on the side of the shipper of oil in tanks. The business of dealers, whether it be by shipments in tanks or in car-load lots in barrels, is in direct and actual competition. It is obvious that where the railroad company does not furnish tanks one shipper cannot compete in all respects upon equal terms with another shipper who furnishes tanks for the transportation of his oil, unless he also furnishes tanks. The method of shipment of oil in tank cars seems now to be fully established, though very few of the railroads of the country own tank cars. The Pennsylvania Railroad Company, it appears, does own such tank cars. The use of tank cars in the shipment of oil is of recent origin. It seems to be done chiefly by a few independent companies who own tank cars furnished to shippers for this purpose, but in a few instances they are owned by the shippers themselves.

The transportation of petroleum oils being a special traffic, as we had occasion to observe in the case of *Rice v. The Louisville and Nashville Railroad Company* and others, it is properly the business of the carrier to supply the rolling stock for the freight he offers or proposes to carry, and if the diversities and peculiarities of the traffic are such that this is not always practical, and consignors are allowed to supply it themselves, the carrier must not allow his own deficiencies in this particular to be made the means of putting at an unreasonable disadvantage those who make use in the same traffic of the facilities he supplies. There appears to be no law that prevents a carrier in the course of his business from arranging with the shipper to furnish cars for the shipment of his own goods at terms agreed upon between him and the carrier, but in every such transaction the carrier, at his peril, must see to it that neither directly nor relatively must a better rate be given to such shipper than to others engaged in the same business, and making shipments of the same kind of goods, who are dependent on the carrier for cars. From this it follows, as we decided in *Rice's* case, that this carrier must make the same rates on oil, whether shipped in car-load lots in tanks or in car-load lots in barrels. The carrier, of course, has the right to charge for the weight of the barrel as part of the freight.

III. Among other relief sought, we are asked to require this carrier to furnish tank cars for petitioners and the public generally in the shipment of their oils, and the question arises whether, under the statute, we have this power. The power was supposed by the petitioners' counsel, in the argument before us, to be found in the last subdivision of section 3 of the Act to regulate commerce. That subdivision is in these words:

“Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.”

A careful consideration of this provision of the statute has brought us to the conclusion that it refers only to facilities between connecting lines at terminal points for the interchange of traffic and passengers. The term “facilities,” as here used, does not embrace car equipment for the origination of and transporting of freight along the line of the carrier in the sense in which it is here contended for by the petitioners.

The power of the Commission to order the defendant to furnish tank cars for the shipment of oil over its line was also supposed by the able and learned counsel for the petitioners to be found in the first section of the Act to regulate commerce. The term “instrumentalities of shipment or carriage,” as found in the first section of the statute, of course includes cars, but they are such cars as are provided by the carrier or used by it in interstate commerce, and the statute, nowhere clothes the Commission with power to determine what kind of cars the carrier should use for this purpose and require the carrier to place upon its line for use in this busi-

ness such kind and number of cars as the Commission may decide will constitute a proper and necessary equipment of car service. The duty of every such carrier is none the less obligatory at common law, and by its charter to furnish an adequate and proper car equipment for all the business of this character it undertakes and advertises in its tariffs it will do. The statute does not undertake to clothe the Interstate Commerce Commission with the power by summary proceeding of compelling a railroad company to perform all its common-law duties, but leaves many of these to be enforced in the courts by suits for damages and by other proceedings. This is apparent from the twenty-second section of the statute, in which it is declared that "nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by any statute, but the provisions of this act are in addition to such remedies." It is also apparent from the enumeration of powers conferred upon the Commission in the statute. The statute contains no provision requiring the carrier to keep its road-bed, bridges, and trestles at all times in good repair for the safe transportation of persons and property, nor any provision clothing the Interstate Commerce Commission with the power of requiring the carrier to do these things, but it is none the less obligatory upon the carrier by the common law and by its charter to do so. Other illustrations readily occur, but it is unnecessary to enumerate them.

The reference to "instrumentalities of shipment or carriage" in the first section of the statute proceeds upon the assumption that every railway carrier will, from self interest, as well as in obedience to the law, perform the plain duty to itself and to the public of providing proper and adequate car equipment for all the reasonable needs of its business. The power, if it should be held to exist at all, on the part of the Interstate Commerce Commission to require a carrier to furnish tank cars when that carrier is furnishing none whatever in its business, would apply equally to sleeping cars, parlor cars, fruit cars, refrigerator cars, and all manner of cars as occasion might require, and would be limited only by the



necessities of interstate commerce and the discretion of the Interstate Commerce Commission. A power so extraordinary and so vital, reached by construction, could not justly rest upon any less foundation than that of direct expression or necessary implication, and we find neither of these in the statute.

The law-making power has not taken upon itself the responsibility, nor has it clothed the Interstate Commerce Commission with the power and the responsibility, of directing a carrier to supply itself with any particular equipment or cars, or, in fact, with any equipment or cars at all, for the transportation of freight over its line. The responsible duty of supplying itself with a sufficient and proper equipment of cars is left by the statute to rest with the carrier, to whom alone it rightfully belongs, and if the carrier fails to do this in such a manner as it should, whereby others are injured or wronged, then that the carrier shall be liable for all the damages which result from such failure.

The provisions of the statute in this respect are explicit. If the carrier is so far unmindful of its plain duty as not to furnish a reasonable and proper equipment for the use of shippers over its line, and does this as a "device" to give one shipper who furnishes his own cars an unlawful preference in the rate, the carrier incurs a severe penalty provided by the statute for enforcement in the courts. It is also liable for the whole amount of damages sustained in consequence of the violation of the statute, together with a reasonable counsel or attorney's fee to be enforced in the courts, and the violation of the statute, so far as the rate is concerned, can be corrected by complaint to the Interstate Commerce Commission, whose duty it is to notify and order the carrier to cease such unjust discrimination and to give equal rates to shippers. In these several modes of procedure the statute has provided ample remedies for the enforcement of this duty on the part of the carrier in different tribunals without clothing either of these tribunals with the power of directing the carrier what equipment or cars it shall furnish for the transportation of freight over its line. The wide field covered by



these several remedies, and the sufficiency of them in each instance, shows that this whole subject must have undergone the most thorough and mature consideration of Congress in the enactment of the statute.

IV. Another phase of the statute is presented by this proceeding, namely, that of the shipper furnishing in part his own cars. Long prior to and at the time the Act to regulate commerce was enacted there was a prevailing general custom and usage among railroads of the United States of renting cars from each other and from mere car-furnishing companies, paying rent for the use of such cars. A like custom and usage then prevailed and has since of the carrier paying rent to the shipper for cars occasionally furnished by the shipper for the transportation of his own goods. This amount in each instance then was, since has been, and is now three-fourths of a cent per mile. It is part of the legislative history of the country that Congress had pending before it for many years in various forms the general subjects which were afterwards enacted into the Act to regulate commerce, and that all these matters were made the subject of lengthy and thorough examination by committees of Congress. We must, therefore, presume, as we heretofore have done, that Congress must have known at the time the statute was enacted of the existence of each of these customs and usages on the part of carriers for obtaining cars, and neither of them are forbidden by the statute. If the carrier had been forbidden by the statute from transporting freight over its line otherwise than in its own cars bulk would have necessarily been broken and cars unloaded by every railroad at the end of its line and there re-loaded into the cars of its connecting line, resulting in greatly increased delays and expense in the transportation of freight; and we can well understand why the statute contains no provision requiring the carrier to transport freight only in its own cars.

The rule upon this subject, to which we have uniformly and steadily adhered, has been that the rate charged by the carrier must not be affected by either one of these customs

and usages, but must be the same on all cars operated over its line, whether furnished by the carrier or by others, just as though no custom or usage existed whereby the carrier obtained any of its cars from shippers or from car companies. The rate of three-fourths of one cent per mile paid for the exchange of cars has seemed to us, upon evidence repeatedly taken upon this subject, a reasonable allowance for the car's service, and has been the same very generally in all parts of the country. We have decided in other cases, as we do now in this proceeding, that the carrier at his peril must see to it in every transaction in which the shipper furnished the car for the transportation of his freight that such shipper shall not thereby receive a lower rate than other shippers who use and have to use the cars furnished by the carrier in the shipment of their freight.

The violation of the statute by which higher rates are charged on car-load lots in barrels than in tanks does not appear to have been accomplished by any mere "device." It seems to have been a lower charge on oil in tanks than in barrels, made directly without any "device" whatever, applying as well to the tank cars of the petitioners as to the tank cars of the Standard Oil Company. It was seriously and earnestly defended at the hearing before us by the defendant, and upon the testimony of learned and experienced witnesses, one of whom was its general freight agent, in whose judgment and intelligence the defendant had a right to rely in making these rates. That the error of the defendant in this respect resulted from a miscalculation of the elements that entered into the service of the two respective modes of shipment is apparent, and although, as we have said, it was a violation of law, yet upon the evidence it does not appear to have been accomplished with that intent, or by any "device" to reach that result. The evidence is strong and uncontroverted that while this result was occurring the defendant's agents and officers, under the repeated admonitions of its president, "to live up to the law and abide by it in all respects," were endeavoring to do so and believed they were doing so. In a business involving so many elements of complication, as that of transporting freight over railroads in

cars wholly different from each other, mistakes of judgment and errors of calculation may occur even under the best administration without any intent to violate the law, and this we find is a case of that description. The statute is one that may be violated without any "device" on the part of the carrier, and it is equally true that the ingenuity of man cannot invent a "device" by which a carrier, subject to its provisions, can give an unlawful preference without incurring the penalties and remedies provided by this statute. The failure of the defendant to furnish tank cars of its own appears to have resulted from its own business considerations entirely. As we have no jurisdiction to order or recommend the defendant to furnish tank cars, we forbear making any comments upon the reasons it has assigned for not furnishing such tank cars for the transportation of oil over its line, and simply state these reasons because they arise as part of the evidence and were offered to negative the idea that the defendant failed to furnish such tank cars on account of any "device" to give one shipper a preference over others.

To enumerate the conclusions to which we have arrived in in this proceeding we state:

1. That so much of the complaint as alleges unjust discrimination in favor of oil shipped in tank cars is sustained, and that it is the duty of the defendant, and it must give the same rates on oil shipped in barrels in car-load lots that it charges upon oil in tanks.

2. That so much of the complaint as alleges unjust discrimination between oil shipped in barrels in car-load lots and less than car-load lots is not sustained.

3. That so much of the complaint as seeks an order from the Commission requiring the defendant to furnish tank cars for the transportation of oil for the petitioners and the public is not sustained.

The order of the Commission is that the defendant, The Lake Shore and Michigan Southern Railway Company, must from and after the receipt of this notice, charge the same rates on oil shipped in barrels in car-load lots in stock cars and other cars that it charges upon oil in tanks—by the pound and not by barrel.

**FRANK L. HURLBURT v. THE LAKE SHORE AND  
MICHIGAN SOUTHERN RAILWAY COMPANY.**

Complaint filed May 8, 1888.—Answer filed June 11, 1888.

Heard July 17, 1888.—Decided July 20, 1888.

In a proceeding to correct a classification of freight made by the initial carrier, which freight before reaching its destination must pass over the roads of several carriers, it is proper to make all such carriers parties; but if the initial carrier alone is made defendant, the proceeding is not for that reason defective. An order requiring that carrier to make the correction will be effectual for the purposes of all subsequent consignments, and there is no difficulty in its being complied with without asking the consent of others.

Persons having an interest in a question pending before the Commission will be allowed to appear and be heard when the case is being submitted, without their being made formal parties.

Assurances made by a carrier that if one will locate in business on the line of its road his property shall be taken for transportation as belonging to a specified class cannot bind the carrier so as to compel a classification accordingly. A right to special rates cannot be made out in that way; the classification must have the same construction in favor of all persons; the law requires uniformity and impartiality in the dealings of a carrier with all persons.

The railway officials who have made a classification cannot testify to their understanding of its construction. A classification sheet is put before the public for general information; it is supposed to be expressed in plain terms so that the ordinary business man can understand it, and in connection with the rate sheets, can determine for himself what he can be lawfully charged for transportation. The persons who prepared the classification have no more authority to construe it than anybody else, and they must leave it to speak for itself.

It is competent to prove by the testimony of witnesses in what sense terms of art or terms peculiar to any occupation or business are used by those engaged in such occupation or business. But when such terms are made use of in a classification sheet to designate the product of a particular employment, they are supposed to be used as understood in that employment, and it is not competent for railroad experts, when the meaning of the classification is in question, to testify in what sense they are understood in transportation circles.

Under a classification which puts lumber in car-load lots in the sixth class, and unfinished wagon materials in the fifth class, it is held that hub blocks which are prepared as such to be sold to the manufacturers of hubs and of wheeled vehicles, but upon which only so much labor has been expended as is needful to put them in condition for seasoning, are to be regarded as the raw material upon which the process of manufacture

of hubs is not yet begun, just as boards are the raw material from which wagon boxes are made. The blocks belong, therefore, when not otherwise specified, in the classification sheet with lumber, instead of with unfinished wagon materials.

#### REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman*:

The complaint in this case presents a question of construction, arising under what is known as official classification No. 2, adopted by the Joint Committee of the Trunk Line Association, to take effect July 15, 1887.

The complainant is a manufacturer of hub blocks at Ashtabula, Ohio, on the line of the defendant's road. Previous to 1887 he was in the same business at another place and on the line of another road, and in view of a removal to Ashtabula, if satisfied it would be to his advantage, he opened correspondence with the general freight office of the defendant to ascertain what the freight charges would be on his product. In the correspondence the terms "hub blocks" and "hub blocks in the rough" were made use of. In response to his inquiries the regular rates on articles in the sixth class were quoted to him. After receiving the response he located at Ashtabula, relying, as he claims, upon having sixth-class rates regularly given him.

The blocks which complainant prepares for market and in which he deals are variant in size, but appear from the evidence to average about twelve inches in length, and to be in diameter from about four inches up to about twelve. They are sawed from trunks of trees or logs which as a maximum must not much exceed a diameter of twelve inches, and they are then passed through the turning-machine and sufficient taken off to remove all the bark, leaving a cylindrical block of uniform thickness. A hole an inch or so in diameter is then bored longitudinally through the heart of this block, and the ends are dipped in a preparation of rosin and oil to prevent checking. In that condition the blocks will average in value about four cents; and it is in that state that complainant disposes of his blocks to manufacturers of hubs and wheeled vehicles. Complainant has made several shipments

over defendant's road, but in each case the consignment has been billed as fifth-class merchandise. The freight department of defendant insisting that the billing is such as the classification requires, this proceeding is instituted to correct the supposed error.

A preliminary objection is raised on the part of the defence that necessary parties are wanting.

The consignments made by complainant over defendant's road were destined respectively to Wallingford, Connecticut; Lambertville, New Jersey; New Haven, Connecticut, and Shortsville, New York. In each case the consignment was billed for delivery by defendant to another carrier, the defendant's road not reaching any of the points named. None of the other carriers is made a party to this proceeding. Counsel for defendant insist that this is essential, and that, consequently, this proceeding should be dismissed. We do not think so.

In *Allen v. The Louisville, New Albany and Chicago R. R. Co.*, 1 Int. St. C. C. Rep., 199, it was decided that when the object of a complaint was to compel a reduction of rates from a western point to the seaboard, all the carriers forming the line over which the property is transported must be parties, and that it is not sufficient to proceed against the initial carrier alone. The reason is obvious; all the carriers are interested alike and directly, and any order made against the initial carrier alone would be altogether futile, since the direction to that carrier to change the rate for the whole distance would be one it would have no power to comply with, because it could not, even under the order of the Commission, make rates for other carriers. But an order to this defendant that it receive merchandise and bill it in a particular class for transportation would be one that there would be no difficulty in its complying with without awaiting the consent of others.

It is true that the other carriers which have received complainant's property from the defendant are interested in the question the case presents; but so are all the parties which united in making official classification No. 2, and which are governing their rates by it. If in this case it should be held

that the classification actually made by the defendant was erroneous, all the carriers making rates under official classification No. 2 will be expected to conform to the ruling. The interest is so apparent that if any of such carriers had appeared and asked to be heard when this case was presented the request would have been granted without hesitation. Nevertheless, the interest of such other carriers is indirect, and is in the question involved, rather than in the particular controversy; it is such an interest as in judicial proceedings would not make any one of them a necessary party to a suit. And to require all the parties governed by the official classification to be joined in this case would from the very number be to make the remedy of little or no value. But the law, clearly as we think, does not require it.

If the Commission were to undertake to make an order retroactive in terms and to require the refunding of freight moneys paid, which have been received by several parties, the necessity for such parties being first brought in might be imperative; but in this case, if we find the classification erroneous, we shall restrict to its correction any order that may be made. The defendant is not, therefore, entitled to have the case dismissed.

It will be convenient, before taking up the official classification for examination, to consider the complainant's claim that he was induced to locate at Ashtabula by the assurances of defendant's agents that his goods would be taken as sixth class. Some importance is attached to these assurances as establishing equities in his favor. On the other hand it is contended by the defence that complainant was understood in the correspondence to be asking for rates upon blocks as they are when first cut from the log and with the bark on, and that it was with reference to such blocks that rates were given him. We do not, however, consider this very material. The official classification must have the same construction in favor of all other persons as is given it in favor of complainant; no assurances to him, however honestly made or honestly relied upon, can entitle him to special rates. He could not have special rates under an express promise, and quite as plainly he cannot have them because of any conduct of



defendant's agents such as was shown in proof. The law requires uniformity and impartiality in the dealings of a carrier with all its customers.

We are brought, then, to an examination of official classification No. 2. This classification has since been superseded, but the clauses in it which would bear upon this controversy are retained in that which takes its place.

Among the articles specified is lumber, which, in car-load lots, is placed in the sixth class. Under the general head of wood articles is specified "wooden billets, sawed in rough," also placed in the sixth class. Under the general head "Parts of vehicles and vehicle stock or stuff in car-loads" are mentioned hubs, placed in the fifth class, and wagon material, unfinished, also placed in the fifth class. The hub blocks dealt in by complainant must find a place with some of the articles thus mentioned.

On the hearing it was thought by counsel that a settlement of the proper term to be applied to these blocks might go far to determine their place in classification, and the defence sought to show that the proper designation was hub blocks, as distinguished from hub blocks in the rough, which, it was contended, were the blocks before the bark was removed. A member of the committee of railroad officers who had prepared official classification No. 2 was called and asked to give his opinion and the understanding of the committee, but the evidence was ruled out as altogether inadmissible. A classification sheet is put before the public for its information. It is supposed to be expressed in plain terms, so that the ordinary business man can understand it, and in connection with the rate-sheets, can determine for himself what he can be lawfully charged for transportation. The committee who prepared this classification have no more authority in construction than anybody else, and they must leave the document, after they have given it to the public, to speak for itself.

Terms of art, however, or terms peculiar to a particular occupation or business may sometimes require the evidence of experts for their full understanding, and the defence offered testimony of persons connected with transportation as



to the understanding of the terms "hub blocks" and "hub blocks in the rough" in transportation circles; but this evidence was also rejected for the plain reason that it was not the meaning as understood in transportation circles that was in question, but the meaning accepted and acted upon in the business in which the blocks are dealt in and made use of. The classification is supposed to inform the persons engaged in that business in what classes the articles they handle are placed for transportation purposes, and it would fail to do this if instead of employing terms of designation in the sense familiar to themselves it made use of them in a sense fixed upon by persons engaged in an occupation altogether different, and which might to an expert in their own business be strange and misleading.

But we do not regard the term applied to the particular article in question as very important when neither of the terms suggested is found to be given in the classification sheet. We have the article before us in the proof, and the question is where it should be placed under a classification which does not name it specifically. The defense claim that it belongs with "wagon material unfinished," it being indisputably designed for wagons and a process of manufacture having actually been commenced upon it. This fact—that the manufacture had been commenced—is supposed by the defense to be what should determine the question in controversy.

It is conceded, however, that there is a stage in which wood is not to be classed as "wagon material, unfinished," though destined for the making of wagons, and though something has already been done upon it in the way of preparation. Thus wood for wagon boxes is in a process of manufacture when it is being cut into boards; but it is not then called "wagon material, unfinished." Indeed, if the boards were to be cut at just the required length and sold for the particular use, they would still be "lumber," and would be accepted and transported as such in the sixth class. This was conceded by counsel on the hearing. The process of manufacture, then, is a process subsequent to that which converts the trees into lumber; and it may be added that it

is commonly a process which begins some considerable time later, and after the lumber has become seasoned.

Now, the evidence in the present case is that the manufacturers of hub blocks procure the raw material in the log, cut it into pieces of the proper length, turn off the outside sufficiently to remove all bark, which in part is done to guard against injury by worms, and take out the heart. All this is for the purposes of a proper and safe seasoning. If the seasoning were to take place with the bark on and the center not taken out the cracking from unequal contraction would render the blocks unsuitable for use. The dipping of the ends in the mixture of rosin and oil is to prevent checking at the ends. When thus prepared the blocks should be and usually are kept for one or two years for seasoning or should be steamed before they can be made into hubs; but all that is done up to this point is not the beginning of a manufacture of hubs, but it is a preparation of timber from which in due time hubs may be manufactured. The marketable value of hub blocks only begins when the blocks are in the condition described; until that stage is reached the raw material would under the classification in question be classed as "logs." The process of preparing the blocks corresponds very closely with the process of converting trees into boards for such uses as boards are applied to; the manufacture of the particular article begins after the seasoning of the raw material is completed.

There are reasons of strong equity why the railroad managers, in making classification sheets, should thus distinguish between the material which is thus being prepared for manufacture and the article while the manufacture is in progress. It was shown in this case that the value of a car-load of these blocks weighing 28,000 pounds would be but about \$280, while the value of a like load of the hubs in the rough—that is to say, of the blocks turned down to the size and shape of the hub, but not mortised or otherwise perfected—would be about \$5,000. The reasons, therefore, would be very strong for not classing the blocks and the hubs in the rough together, and it is not likely that any classification committee would intentionally do so. But however that

may be, we do not think it has been done in this case. The blocks in question are not to be regarded as "wagon material unfinished," because the process of making the marketable article into parts of wagons is not yet begun upon the marketable article. They are the unseasoned raw material on its way to the hands of the manufacturer. They must, therefore, be considered as properly classed with lumber, and not as they were classed by the defendant's agents in the case of the consignments in question.

This construction of the classification is strongly supported by the lumber tariff issued by defendant and in force upon its lines. In the official classification the word "lumber" is not defined, nor is any attempt made to indicate what articles are intended to be embraced in that general designation. The lumber tariff, however, enumerates a line of articles which are accepted for transportation under that general head. They include, among others, barrel shooks, box stuff, cooperage stock, heading bolts, hoops, hop poles, laths, wooden paving blocks, pickets, picture backing, shingles, stave bolts, staves, and heading, telegraph cross-arms, and telegraph poles. Applying to hub blocks the rule of the classification, that "articles not enumerated will be classed with analogous articles," they quite easily arrange themselves with the articles above named, some of which, indeed, have reached the final stage of manufacture. On the other hand the articles manufactured from wood which are placed by the official classification in the fifth class were enumerated in the case of *Reynolds v. Western New York and Pennsylvania R. R. Co.*, 1 I. C. C. Rep., 397, and scarcely any of them can be said to be analogous to the hub blocks in question.

Order will be entered that the complainant is sustained, and that in any consignments to be hereafter made over its road the defendant must conform to the construction of the classification sheet above laid down.

FRANK L. HURLBURT *v.* THE PENNSYLVANIA  
RAILROAD COMPANY.

Complaint Filed May 8, 1888.—Answer Filed May 31, 1888.

Heard July 17, 1888.—Decided July 20, 1888.

COOLEY, *Chairman*:

This case was submitted upon the testimony taken in the case of *Hurlburt v. The Lake Shore and Michigan Southern Railway Company*. It presents the same question and no others, and requires the same decision. Order will be entered accordingly.

**JOHN W. S. BRADY AND GEORGE T. PARKHURST,  
PARTNERS, TRADING UNDER THE FIRM NAME OF J. PARK-  
HURST & Co. v. THE PENNSYLVANIA RAILROAD  
COMPANY, THE PENNSYLVANIA COMPANY, THE  
PITTSBURGH, CINCINNATI AND ST. LOUIS  
RAILWAY COMPANY.**

**JOHN HENRY NICOLAI, TRADING AS "EAGLE OIL WORKS,"  
v. THE PENNSYLVANIA RAILROAD COMPANY,  
THE PENNSYLVANIA COMPANY, THE PITTS-  
BURGH, CINCINNATI AND ST. LOUIS RAILWAY  
COMPANY.**

Complaints filed November 28, 1887, v. Pa. R. R. Co.

Answer of defendant filed December 19, 1887.

Heard January 23, 1888.—Decided July 23, 1888.

Order of leave to make Pennsylvania Company a party defendant February 18, 1888, and Pittsburgh, Cincinnati and St. Louis Railway Company a party defendant February 21, 1888.

Answer of new defendants, separately, filed April 5, 1888, and heard as to them April 24, 1888.

1. Through and continuous lines imply through rates which must be reasonable rates.
2. When railroad companies make a through and continuous line and offer it for the use of the public, they cannot rid themselves of responsibility for unjust charges by breaking the haul in two and calling themselves carriers on the separate ends of their through line.
3. The Pennsylvania R. R. Co. operates a part of a through line which it joins in making, and owns a controlling interest in the capital stock of the Pittsburgh, Cincinnati & St. Louis R'y Co., by which the other part is operated.

*Held*, That the Pennsylvania R. R. Co. cannot free itself from the responsibility of excessive through rates by getting behind the corporate existence of the other company as a separate carrier.

4. The apportionment of rates to different parts of a through line do not determine the charge to the public but may be significant on the question of reasonable rates for the whole distance.
5. The danger from transportation of oil through Pittsburgh when apportioned upon all the business is deemed so unimportant as not to materially affect the rates which should be charged.

*John Henry Keene, Jr.*, and *Archibald Sterling*, for Complainants.

*James A. Logan* and *Bernard Carter*, for Pennsylvania Railroad Company.

*John Scott*, for Pittsburgh, Cincinnati and St. Louis Railway Company.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner*:

These cases were heard together by consent of the parties. In their facts, reasons, and the answers of the defendants they are substantially the same. In both complaint is made of the defendants that from April 15, 1887, they exacted and demanded and continued to charge the plaintiffs fifty cents per barrel of forty-five gallons each of crude petroleum from Washington, Pennsylvania, to Baltimore, Maryland, in car-load lots; that, while exacting fifty cents between the places named, the defendants carry such oil to Baltimore for forty cents, from Bradford and Clarendon, Pennsylvania, and Olean, New York, about the same distance as Washington, Pennsylvania, from Baltimore; that the said charge of fifty cents is unjust and unreasonable, and to the extent of ten cents per barrel excessive, and that complainants have paid, under protest, to defendants, large sums for such unjust, unreasonable, and excessive charges, for which complainants ask reparation.

The Pennsylvania Railroad Company, answering separately, denies that it was a through carrier of oil from Washington to Baltimore, and avers that it was only a carrier from Pittsburgh to Baltimore, for which it received thirty-five cents per barrel; that the oil was carried from Washington to Pittsburgh over the lines of other companies for fifteen cents, and that the gross charge of fifty cents from Washington to Baltimore is just and reasonable, considered by itself, or as compared with the rates from Bradford, Olean, and Clarendon, because of the greater hazard in passing manufacturing plants and other buildings in Pittsburgh.

The Pittsburgh, Cincinnati and St. Louis Railway Com-

pany "denies that at a period named in the bill of complaint it was engaged in the transportation of passengers and property from the State of Pennsylvania to the State of Maryland," and avers that it charged a uniform rate of fifteen cents per barrel for all oil carried from Washington to Pittsburgh, which, it avers, is a reasonable and just rate.

The Pennsylvania Company denies that it was engaged or interested in the transportation of oil between any of the places and during the period mentioned in the complaint, and denies the averments of the complaint, so far as they relate to this defendant.

The facts are found to be that—

1. The complainants, Parkhurst & Co., are dealers in crude and refined oil, and the complainant, Nicolai, is a refiner of oil at Baltimore, Maryland. The defendants are common carriers of passengers and freight over the lines of road owned or operated by them, which are, severally, lines of the "Pennsylvania system." The lines of this system east of Pittsburgh are operated by the Pennsylvania Railroad Company; those west of Pittsburgh by some one of the other defendants. The Pennsylvania Railroad Company is owner of a majority of the capital stock and a controlling interest in the other defendant companies, each of which has a separate corporate organization.

2. The defendant companies have filed with the Commission the following:

"AGREEMENT FOR A THROUGH LINE.

The Pennsylvania Railroad Company, the Pennsylvania Company, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Chicago, St. Louis and Pittsburgh Railroad Company, common carriers, for the purpose of securing and promoting the continuous carriage of freight within the meaning of the Act to regulate commerce, commonly known as the Interstate Commerce Law, do hereby agree that they will interchange freight traffic to be transported over the routes hereinafter specified, and that in the interchange of such traffic the routes described shall be considered continu-

ous lines, and that the through rates over such routes shall be made in accordance with the provisions of said Act which govern two or more carriers associated for the purpose of continuous carriage.

"They further agree that all joint tariffs over the routes designated below shall be matters of agreement among said companies, and that when made they shall be filed with the Commission, as required by law.

"It is further agreed that the lines or routes covered by this agreement are as follows:

"Between all points on the roads of the companies named as parties to this agreement or on roads operated or controlled by any of them or on connecting roads with which any of the said parties may have or make auxiliary agreements for through lines, and between which points joint tariffs of through rates may be established by agreement of all the roads interested, it being understood that the filing with the Commission of such agreed joint tariffs shall be construed as establishing through lines between the points that may be named in such joint tariffs.

"April 4; 1887.

"THE PENNSYLVANIA R. R. Co.

"By F. H. KINGSBURY,

*"Through Freight Agent."*

"WM. STEWART,

*"General Freight Agent Pennsylvania Company,*

*"P., C. & St. L. Ry Co., C., St. L. & P. R. R. Co."*

3. The complainants, Parkhurst & Co., between April 15 and July 27, 1887, and complainant, Nicolai, between April 27 and September 1, 1887, purchased crude oil at Washington, Pa., and shipped the same -part from Washington, Pa., and part from Ewings Mills Station—to Baltimore. The oil was billed through from Washington and Ewings Mills Station to Baltimore by the defendant, the Pittsburgh, Cincinnati and St. Louis Railway Co., and carried by it in the Green Line tank cars of the Pennsylvania Railroad Company over the lines it (the P., C. and St. L. Railway Co.) operates to Pittsburgh, 28 miles from Ewings Mills, and 32 miles from Washington, Pa. From Pittsburgh the oil was



carried to Baltimore by the Pennsylvania Railroad Company over its own line and the line of the Northern Central R. R. operated by it. The oil passed over none of the lines operated by the other defendant, the Pennsylvania Company.

4. The oil was billed at fifty cents per barrel of forty-five gallons. Freight was paid on it at that rate to the agent of the N. C. R. R. Co. at the place of destination, and all in excess of forty cents per barrel was paid under protest. The amount so paid under protest was by Parkhurst & Co., \$754.30; by Nicolai, \$1,108.90. The division of the fifty cents per barrel rate was 15 cents to the defendant, the P., C. and St. L. R'y Co., for the haul to Pittsburgh, and 35 cents to the Pa. R. R. Co. for the haul from Pittsburgh to Baltimore.

5. The defendants frequently, without success, applied for a refund of the amounts of freight paid by them, respectively, in excess of forty cents per barrel, and at various times since, as well as before April 15, 1887, sought and failed to have the rate from the Washington, Pa., oil district reduced to forty cents. These applications and negotiations were to and with the Pennsylvania R. R. Co. In the correspondence on these subjects put in evidence is this refusal to refund:

Copy.

THE PENNSYLVANIA RAILROAD COMPANY,  
OFFICE OF THE GEN'L FR'T TRAFFIC AGENT,  
PHILADELPHIA, *September 26, 1887.*

J. H. NICOLAI, Esq., *Eagle Oil Works, Baltimore, Md.*

DEAR SIR: I am in receipt of your favor of 24th inst. covering claim for 10c. per barrel, rebate on oil shipped from Washington, Pa., and after thorough consideration, we are compelled to return the claim.

We do not think your ground well taken, and if our understanding of the Interstate Commerce Law is correct, we have a perfect right to charge the present tariff from Washington, Pa.

Yours very truly,

(Signed),

JOHN S. WILSON,  
*G. H. T. A.*

And this in relation to the alleged excessive fifty cents rate :

THE PENNSYLVANIA RAILROAD COMPANY,  
GENERAL FREIGHT DEPARTMENT,  
PHILADELPHIA, *July 3, 1886.*

Messrs. J. PARKHURST, JR. & Co.,  
*78 South Street, Baltimore, Md.*

GENTLEMEN: I am in receipt of your valued favor of the 1st inst. relative to the rate on oil from Washington county to Baltimore, and regret that our agreements on oil rates are such that I am unable to make any concession in the tariff. It is the opinion of most of our oil shippers that the Washington county oil is of such superior quality as to enable it to pay the agreed tariff rates.

Yours very truly,

JOHN S. WILSON,  
*G. F. T. A.*

6. From the time of the discovery or development of the Washington county oil field in 1885, the rate on oil to Baltimore has been fifty cents per barrel. During the same period the rate has been forty cents over the lines operated by the Pa. R. R. Co. from points about the same distance from Baltimore, viz., Warren, Clarendon, and Bradford, Pa., and Olean, New York. The distance to Baltimore from Washington is 263 miles; from Warren, 360; from Clarendon, 353; from Bradford, 333; and from Olean, 328. The oil from Olean and Bradford passes over the Western New York and Pa. R. R., and its proportions of the 40-cents rate is 7.27 cents for 51 miles' haul from Olean, and 8.17 cents for 74 miles (the most direct line is 56 miles) haul from Bradford.

7. The rate on the refined products of crude oil over the defendant's lines of road is 45 cents per barrel of 50 gallons for the same distances and between places for which the charge is 40 cents per barrel of 45 gallons of unrefined, or substantially the same price per gallon for crude and refined. The refined oil is worth \$7 or more per barrel; the crude less than \$1 per barrel.

8. Between Washington, Pa. and Pittsburgh, oil passes through tunnels, and through Pittsburgh is carried past and near to manufacturing plants and other buildings, and care is required to prevent accidents from "ignition," as shown by the great damage incurred by one of the defendants as the result of a collision on its line at Brunswick, N. J. No accident has yet occurred to the defendants in carrying oil from Washington. The recent discovery of natural gas and its partial substitution for coal and oil in Pittsburgh, witnesses believed, tends to lessen, not to increase, the liability to accident in carrying oil through the city. The general cost of transportation on the Pennsylvania system of railroads is decreasing, or as one of its officers testified, is "getting down."

9. Previous to the year 1883 the rate on crude oil from the Olean and Bradford oil region to Baltimore was eighteen cents per barrel of 45 gallons. Some time in the year 1883 the rate was raised from eighteen to, and since then maintained at, forty cents. For several days next after the Act to regulate commerce was in force crude oil was billed and carried from Washington to Baltimore by the defendants for thirty-six cents per barrel, but it was so billed and carried in the confusion attending the adjustment of rates upon the going into effect of said Act, and this was not a fixed or permanent rate.

The complaints in these cases were first made against the Pennsylvania Railroad Company. That company answered, denying that it was a through carrier from Washington, Pa., to Baltimore, and averred that it was a carrier only from Pittsburgh to Baltimore, and that the oil was carried from Washington to Pittsburgh by and over the lines of other companies. After hearing the cases so presented, leave was given the complainants to amend their petitions by making the Pennsylvania Company and the Pittsburgh, Cincinnati and St. Louis Railway Company parties defendants.

On the final hearing it is shown that the Pennsylvania Company was not engaged in the transportation of oil at the period and between the places named in the complaints, and that the carrying in question was done by other defend-

ants, The Pa. R. R. Co. and the P. C. and St. L. Railway Co.

The claims of the plaintiffs for reparation in money present cases in which the Commission makes no award, for reasons assigned in the case of *Wm. H. Councill v. The Western and Atlantic R. R. Co.*, 1 Interstate Commerce Commission Report, 339, and the case of *Heck & Petree v. The East Tennessee, Virginia and Georgia R. R. Co., et al.*, same, 495.

The route over the lines of the defendants from Washington, Pa., to Baltimore, if not so without it, is made a through and continuous line by their "agreement for a through line." Each of these two defendants operates a separate part of this continuous line, and denies that it is a carrier over more than it operates. The complaint is of excessive and unreasonable charges for freight billed through and carried over the whole of this continuous line. If this through carriage is broken into parts east and west of Pittsburgh, by operation of law or otherwise, such breaking might and probably would deprive the complainants of their remedy for the grievance complained of. That part of this through and continuous line west of Pittsburgh is wholly within the State of Pennsylvania, and when a separate or local line exclusively, not subject to the jurisdiction of this Commission. To this part the excessive charges complained of may be apportioned if the parties to the agreement for a through line may elect to constitute themselves carriers over distinct parts or sections of it.

The public has no interest in the division railroads make among themselves of their joint earnings from transportation over through lines. Nor have the complainants any interest in the division the defendants make between themselves of the through rate on oil. It is the reasonableness of the through rate, not of any division or part of it, that the complainants have a right to insist upon. It is true that part of the continuous line west of the city of Pittsburgh is operated by a separate corporation from the defendant, The Pennsylvania R. R. Co., which operates the part east. The same is true of all the lines of the Pennsylvania system west of that city. They are so operated for the convenience and profit of their owners. The Pennsylvania R. R. Co. owns a major-

ity of the capital stock and a controlling interest in all the companies or separate corporations by which the several lines of the Pennsylvania system west of Pittsburgh are operated. The correspondence and attempted negotiation by complainants for lower rates over the lines through from Washington, Pa., to Baltimore, were all with the Pennsylvania R. R. Co.

It conferred with complainants as to the reduction of such rates without any pretense of a want of authority to make and control them. The larger part, if not all, the earnings of all the lines of the Pennsylvania system of roads operated by separate corporations, including the part of the Washington, Pa., and Baltimore line west of Pittsburgh, goes to the treasury of the Pennsylvania R. R. Co. This is equally true whether the earnings are derived from reasonable or unreasonable charges. With the right to appropriate the earnings from rates and charges on lines it so largely owns, that it may control them, the Pennsylvania R. R. Co. cannot be permitted to free itself from the responsibility of excessive charges by getting behind separate corporations.

By their agreement filed with the Commission, the defendants made this a through line and offered it to the public for continuous transportation from Washington, Pa., to Baltimore. Through carriage implies a through rate which must be a reasonable rate. The defendants, The Pennsylvania R. R. Co. and the Pittsburgh, Cincinnati and St. Louis R'y Co., by their agreement, made this a through line and offered it to the complainants and the public for continuous carriage over it. They billed and hauled the oil through over the line, and they cannot rid themselves from responsibility for unjust charges by breaking the haul in two and calling themselves carriers on the separate ends of the line they hold out to the public as a through line.

In support of their claim that the defendants' crude oil rate of fifty cents per barrel from Washington to Baltimore is unjust and unreasonable, the complainants show that the rate over the lines of the Pennsylvania system for like distances from other oil-producing districts is forty cents. In their demand for reparation they, the complainants, ask that

they be awarded ten cents per barrel, the amount paid by them to defendants, under protest, in excess of forty cents, which is thus conceded to be a reasonable rate.

The defendants justify the fifty-cent rate as reasonable on the alleged hazard and liability to accident in carrying oil through Pittsburgh, and on this alone. They do not call to their aid any alleged difference in grades, volume of business, or other causes which affect the cost of transportation.

The correspondence between the plaintiffs and defendants, or one of the defendants, The Pennsylvania R. R. Co., put in evidence on the subject of this fifty-cent rate, has been extensive and goes back two years or more, but in it there is no mention of the alleged danger of passing through Pittsburgh as a justification for this higher rate. Two years ago, as shown by the correspondence copied among the facts found, it was attempted to be justified in the superior quality (greater value) of the Washington oil, while the defendants were transporting crude and refined oil at equal rates for like quantities, and the relative value of the refined and crude was seven to one. Some of the places from which the oil is carried for forty cents, by the Pennsylvania R. R. Co., to Baltimore, about equally distant as Washington, Pa., are Warren, Charendon, and Bradford, Pa., and Olean, N. Y. The Olean passes fifty-one miles, and the Bradford oil 74 miles, to the line of the Pennsylvania R. R. Co. over the line of the Western New York and Pennsylvania R. R. Co., which does not belong to the Pennsylvania system, and which receives 7.27 from Olean and 8.17 from Bradford out of the forty-cent rate. This apportionment or division does not determine what the charge to the public should be, but it is not without significance in determining what are reasonable rates for the whole distance on the lines in question. The defendants so divide the fifty-cent rate that the Pittsburgh, Cincinnati and St. Louis R'y Co., which is one of the lines of that system, receives 15 cents for the 28 to 32 miles over its line, or double as much as the Western New York and Pennsylvania R. R. Co. receives for double the distance. The Baltimore rate was fixed at fifty cents soon after the development of the Washington county oil district, now several

years ago, and at a time when the rate from other points on defendants' lines, equally distant from Baltimore and other seaboard points, was but forty cents. The evidence shows that it was made on other considerations than the dangerous character of the carriage through Pittsburgh, which was first assigned as a justification for a higher rate on the Washington oil by the answer of the defendants in these proceedings.

Any traffic in oil is attended with liability to accident, but none has occurred to the defendants in the transportation of Washington oil through Pittsburgh. The accident and consequent loss to them at Brunswick, N. J., insisted upon as evidence of the exceptional hazard and liability to accident from ignition in passing valuable manufacturing plants and other buildings in Pittsburgh, was the result of a collision of trains.

The danger from the necessary transportation through Pittsburgh must be very slight when apportioned upon all the business. It does not seem to the Commission so important that it can sensibly affect the rates which should be charged. The skill and intelligence of railroad management have considerably reduced the cost of transportation since the fifty-cent rate was made, and the Commission is of opinion this rate has now become excessive and should be reduced to the extent claimed.

The order of the Commission is that the defendants, The Pennsylvania Railroad Company and the Pittsburgh, Cincinnati and St. Louis Railway Company, cease and desist from charging rates on crude oil from Washington, Pa., to Baltimore, Md., in excess of forty cents per barrel.



THE NEW JERSEY FRUIT EXCHANGE v. THE CENTRAL RAILROAD COMPANY OF NEW JERSEY AND THE LEHIGH VALLEY RAILROAD COMPANY.

Hearing July 10th and 11th, 1888.—Decision July 23d, 1888.

Rates for the transportation of fruit. The traffic originates in the State of New Jersey, and is destined to the city of New York. But the delivery by the defendants to the consignees is made at Jersey City in New Jersey, and the rates of defendant are made not to New York but to Jersey City. Under these facts the traffic, so far as defendants conduct it, is not interstate, and the Commission has no jurisdiction over their rates.

As to certain traffic originating in New Jersey and destined to Pennsylvania, it is held that the showing is too indefinite for any conclusion.

*J. A. Bullock, Esq.* for the Complainant.

*Robert W. de Forest, Esq.*, for Defendant, The Central Railroad Company of New Jersey.

*F. H. Juncier, Esq.*, and *F. I. Gowan, Esq.*, for Defendant, The Lehigh Valley Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner* :

The complainant in this case is duly incorporated under the laws of New Jersey, under the name and style of the New Jersey Fruit Exchange, and the complaint sets forth that the defendants, The Central Railroad Company of New Jersey and The Lehigh Valley Railroad Company, charge eleven cents per basket of sixteen quarts for the transportation of peaches from Flemington and neighboring stations to New York, eight cents from Bloomsbury to Easton, and similar rates from and to other places; that the average weight of a basket of peaches is thirty pounds, and the distance from Flemington to New York is fifty-two miles, making the freight charge fourteen cents per ton per mile between those places; that the distance from Bloomsbury to Easton is eight miles and the rate is forty-four cents per ton per mile; that the peaches from that section are generally transported in full car-loads, several being filled at each station every day during the season of gathering the fruit. The



complainant charges that the rates are excessive, unreasonable, and unjust, and in violation of the first section of the Act to regulate commerce, and the petition asks that the Commission shall order such reduction of rates by the companies complained of as shall make them reasonable and just and in accordance with the provisions of the Interstate Commerce Act. Schedules of rates are annexed to the complaint and are made part of it.

The answers admit that the charges for transportation of peaches during the peach season of 1887 were as stated in the schedules annexed to the complaint, but deny that any rate is made from points in New Jersey to the city of New York. The weight of a basket of peaches and the distance from Flemington to New York, and from Bloomsbury to Easton, are also admitted.

It is further admitted that peaches from many, although not from all of the stations in the section referred to, are generally transported in full car-loads, and the answers deny that the rates for the transportation of peaches are excessive, unreasonable, or unjust, and justify the rates by setting forth that the transportation of peaches requires special preparation and special arrangements, which greatly increase the cost of transportation. The answers specify the number of cars set apart for this special service, and the manner in which they are fitted up for that purpose, and also allege that after the season opens special trains are run for the transportation of peaches, one and frequently two daily, making almost the time of passenger trains, and that a large force of men is employed at the peach-shipping stations and at Jersey City in this service, at considerable expense; that the peach trains deliver their freight at a special yard in Jersey City, and not in New York City, said delivery at Jersey City being more expeditious and more convenient for shippers; that the peach cars can carry no return freight by reason of the manner in which they are fitted up, and are returned empty, except that the baskets are returned by them, and on these no charge is made. It is further alleged that the rates heretofore charged have only been remunerative in years when a full crop of peaches was raised and trans-

ported; that when the crop has been small said rates have barely covered respondents' expenses. The answers set forth that so far as the transportation is concerned the commerce is entirely within the limits of one State, to wit, the State of New Jersey.

The essential facts as to the distance hauled, the rates charged, the weight of a basket of peaches, that they are usually transported in car-load lots, that the service is special, and cars fitted up expressly for the business, and that the time made is nearly equal to that of passenger transportation, are all undisputed, and are as set forth in the pleadings.

Considerable testimony was given on the hearing showing the origin and growth of the peach traffic, the quantities transported for several successive years, and the prices received for the peaches in the market. Evidence was also given showing in detail the manner in which the cars are fitted up for this service and the expense of fitting them up, and the additional expense incurred by the defendants for the train service in the transportation of the peaches. It was satisfactorily shown that the transportation of the peaches in question by the defendants, so far as that transportation is east-bound, is to Jersey City, and not to New York, and that the delivery of the peaches to the consignees in New York—or when they are carried by other lines beyond New York—is at Jersey City. The tariffs published by the defendants for this transportation are to Jersey City, and not to the city of New York, and other tariffs were put in evidence showing that the transportation to the city of New York by the defendants is three cents per hundred higher than to Jersey City. It appears in evidence that the present rates of transportation for peaches are the same as they have been from the beginning of the special service for this traffic, and that, although the volume of business has largely increased, the rates have not been reduced. It also appears in evidence that the shippers of peaches are at liberty to have them transported in ordinary freight trains to New York, at a rate of transportation which on those trains is lower than upon the special trains, but that it is highly

important that the peaches should have a speedy delivery in the market, and for that reason the shippers prefer the special trains. It also appears that the delivery in Jersey City has been the custom for many years, and is not a device of the carriers to evade the law, but is made there by the consent and for the accommodation of the consignees in New York. During the last season, and since the organization of the Fruit Exchange, the sales of peaches by the growers have to a considerable extent been made in New Jersey at or near the points of production, instead of being transported, as formerly, to New York to be sold by commission agents; and the growers have realized better prices since their sales have been made in New Jersey. Very little testimony was given in relation to the west-bound shipments into Pennsylvania and other western points, and no data have been furnished to the Commission upon which any satisfactory conclusions can be based as to the rates upon shipments in that direction. The bulk of the shipments, as shown by the testimony, go to the city of New York.

Upon the facts of the case as they appear without contradiction the Commission has no authority or jurisdiction to make an order concerning the rates. If the shipments were interstate in their character they would be within the jurisdiction of the Commission, but as the transportation by the carriers is wholly within the State of New Jersey, the Commission has no jurisdiction. The proviso in the first section of the Act to regulate commerce is as follows:

*“Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.”*

This provision applies to all the peaches that are delivered at Jersey City and destined either for New York City or any points beyond that city.

The argument of the complainant's counsel that a contract for delivery in New York is to be inferred from the fact that

a tag is attached to one or two of the baskets in each shipment, addressed to the commission merchant to whom the shipment is consigned, showing the street and number of his place of business in New York city, is not supported by the proofs. The undisputed facts are that the delivery is actually made in Jersey City ; that the returns of the commission merchant invariably show the deduction of a given sum for freight and four cents for cartage ; and that the consignees desire to receive, and in fact, actually do receive the peaches at Jersey City. Whatever *prima facie* contract may in some cases be inferred from the receipt of an addressed parcel, it is clear that in the present case no duty is undertaken by the carriers, and none devolves upon them, beyond the delivery of the peaches at Jersey City.

These facts being clear, it is superfluous and profitless to dwell with any detail upon the character of the business, or to discuss the subject of the rates. It may be appropriate to observe, however, that in view of the increasing volume of business in the peach traffic, and the increased competition in the New York market, a reasonable reduction in the rates, corresponding with the growing volume of business and the competition in the market, might be just. It would seem quite probable that rates which might have been deemed reasonable and necessary in the infancy of this traffic, now that the traffic has become large and important might justly be reduced to some extent and still leave to the carriers full compensation for the service and a reasonable margin of profits. These are considerations that address themselves to the sense of justice of the carriers, and rest on the principle of fair dealing that is due between the carriers and their customers.

For the reasons that there are not sufficient facts presented in the case upon which to base an order respecting the west-bound shipments, and that the transportation to Jersey City is wholly within the State of New Jersey, and therefore, not under the jurisdiction of this Commission, the complaint is dismissed.

THE LINCOLN BOARD OF TRADE v. THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA, AND THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY.

Municipal subscriptions or gratuities do not affect the question of undue preference under Sec. 3 of the Act to regulate commerce.

Disparity in existing rates to Lincoln and to Omaha found to correspond so closely with the difference in distance that no change is required upon that ground.

Principle that the ratio of rates should decrease with increase of distance conceded, but modifying conditions often exist; some of them stated as applied to the facts in this case no change in rates required.

Lincoln is not naturally entitled to the same rates from Chicago as Omaha, and if such rates were conceded Omaha would probably have a valid ground of complaint.

Complaint filed November 11, 1887.—Tried at Lincoln, Neb., March 23, 1888.  
—Filing of Briefs completed May 23, 1888.—Decided August 11, 1888.

*G. M. Lambertson* and *O. P. Mason*, for Complainants.

*T. M. Marquett*, for Defendants.

REPORT AND OPINION OF THE COMMISSION.

WALKER, *Commissioner* :

The complaint now to be disposed of forms part of a complaint against the same and other companies on the docket of the Commission as No. 94. The other issues presented therein relate to east-bound trans-continental rates, and are to be separately decided.

The portion of said complaint now to be considered avers that the rates over the defendant lines from Chicago to Lincoln are unjust and unreasonable in themselves; that they are unjust as compared with the rates from Chicago to Omaha and other competing towns in Nebraska, and also as compared with rates prior to the passage of the Act to regulate commerce. It is averred that rates from Chicago to Lincoln, based on distance, would not exceed 1.06 per cent. of the rate from Chicago to Omaha, whereas in fact they are from 10 to 40 per cent. higher. It is also averred that Lincoln is a large jobbing point, a city of commercial importance, and in active

competition with other cities of a similar class for supremacy in trade; that it is the practice of the railroads to make large business centers rate-basing points, and in so doing to consider the equitable demands of trade; that this principle has been ignored by the defendants, so that while other jobbing points have equal access to points in Nebraska and throughout the west, Lincoln, as a result of high in-rates, is confined to a very restricted territory; and that this is not the result of unfortunate location, but of discriminating tariffs. It is further claimed that in making rates from Chicago to Lincoln the defendants should consider distance as a factor, and that the ratio of the rate should decrease with the increase of the distance, a principle which it is said the defendants ignore.

The answer claims that the distances and rates are not correctly stated in the complaint; denies that the charges in question are in contravention of any of the provisions of the Act to regulate commerce, and insists that they are just and reasonable.

The facts are found to be as follows:

Lincoln is the capital of the State of Nebraska; a city of about 40,000 inhabitants; the center of a considerable jobbing trade, in which it competes with Omaha for the distribution of all classes of goods throughout central and northern Nebraska; the seat of two packing houses and several other manufacturing establishments; the crossing or terminal point of several railroads; and it is quite advantageously situated for all commercial purposes.

The defendant companies are separate corporations which are operated in harmony and form what is commonly known as the "Burlington" system. The Chicago, Burlington and Quincy Railroad Company operates the roads of that system east of the Missouri river, and the Burlington and Missouri River Railroad Company in Nebraska operates those west thereof. Joint rates are made by said companies between points east of the Missouri river and points west thereof. The main line of said system runs westerly from Chicago through Burlington, on the Mississippi river, across the State

of Iowa, crossing the Missouri river at Plattsmouth, and thence on through Lincoln to Denver in Colorado. Plattsmouth, Nebraska, is 21 miles south of Omaha and 487 miles from Chicago, making the distance from Chicago to Omaha over this route a total of 508 miles. Lincoln is 48 miles west of Plattsmouth, making its distance from Chicago a total of 535 miles, 1.06 per cent. of the distance to Omaha. The Burlington line can use another route to Omaha, crossing the Missouri river at Council Bluffs, the distance by which is also 508 miles. The usual place of crossing, however, is from Pacific Junction to Plattsmouth, over a bridge owned by the "Burlington" system. Passenger trains are run via Plattsmouth and thence north to Omaha; thence southwesterly, striking the main line at Ashland, distant 30 miles from Plattsmouth and 31 miles from Omaha. Freight trains are run directly west from Plattsmouth, through Ashland to Lincoln and points beyond. Freight destined for Omaha is hauled north from Plattsmouth to that city. The shortest rail line from Chicago to Omaha is 490 miles and from Omaha to Lincoln 54 miles. On that basis the Lincoln distance is something over 1.10 per cent. of the Omaha distance. On the basis of the shortest route to Omaha, 490 miles, and the shortest route to Lincoln, 535 miles, the Lincoln distance is something over 1.09 per cent. of the Omaha distance.

The various roads competing for business from Chicago to Omaha unite upon an agreed tariff to all Missouri river points. One of those roads is the Missouri Pacific, which reaches Omaha from the south, coming from Kansas City on the west side of the Missouri river. The latter company, conforming to the requirements of the fourth section of the Act to regulate commerce, makes rates to all points on its line south of Omaha no higher than the agreed Omaha rates, thus compelling the extension of the Missouri river rates on the Burlington system to points in Nebraska where its line crosses the Missouri Pacific. One of these points is Louisville, on the main line above described, distant 23 miles west from Plattsmouth and 30 miles east from Lincoln. Another is Dunbar, 47 miles east of Lincoln on a line running to Nebraska City.



The rates from Chicago at the time the petition was filed were as follows (tariff of August 22, 1887):

	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.	Lum- ber.	Hard coal.
Omaha.....	90	75	50	35	30	32½	29½	23	20	16	20	16.12
Lincoln.....	1.00	84	57	41	35	40	35	28	25	21	26	18

A reduced tariff, dated December 20, 1887, became generally effective March 26, 1888, after a so-called "rate war" among the roads. This tariff was not actually in force at the time of the hearing, but the case was tried and the briefs of counsel were prepared in view of the new rates then about to become operative, and which are now in force, as follows:

	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.	Lum- ber.	Hard coal.
Omaha.....	75	60	40	30	25	30	25	20	17½	16	16	17¼
Lincoln.....	80	65	44	34	28	33	28	23	20½	19	19	18

By comparing the foregoing tables it will be seen that at the time of filing the petition the Lincoln rates ranged from 10 cents to 4 cents higher on the various classes than the rates to Omaha, Louisville, Dunbar, etc. At the present time the tariff ranges from 5 cents to 3 cents higher at Lincoln than the existing rates to Omaha and other Missouri river points.

Before the Act to regulate commerce took effect the difference in the printed tariffs from Chicago to Omaha and Lincoln was from 14 cents to 5 cents per hundred on the various classes, and the rates to both places were higher than at present. Rebates were freely given however, and the Lincoln merchants were led to understand that by that means they were securing about the same rates charged Omaha merchants. But rebates were allowed to a considerable extent at Omaha also, and the disparity shown by the printed tariffs was in fact in that way substantially preserved.

It is not claimed that these rates are in themselves unreasonably high; but the complainants still insist, that the existing rates unjustly discriminate against Lincoln in favor of Omaha.

Considerable assistance in money and land grants was given to the Burlington and Missouri River Railroad Com-



pany in Nebraska, in connection with the original construction of its lines, by the city of Lincoln and by the State of Nebraska; but it is not perceived in what way the facts in respect thereto are here material. Lincoln is by law entitled to rates which shall not give an undue preference to any other locality, and its right in that regard is not increased, nor is the equal right of Omaha diminished by municipal subscriptions which were advanced for the building of the road.

The views of the Commission have heretofore been sufficiently expressed upon the alleged practice by which large business centers are made rate-basing points.

Coming then to the single remaining question of the relative rates, it appears that the existing class rates to Lincoln are from  $6\frac{1}{2}$  to 19 per cent. higher than to Omaha, the average being something more than 9 per cent. The factor of distance, therefore, upon which the complainants rely, does not point to any serious discrimination in the rate. It is true that upon the line of the defendant system the distance from Chicago to Lincoln is but 1.06 per cent. of the distance from Chicago to Omaha; nevertheless it cannot be overlooked that this is caused by the fact that Omaha is one side of the main line of defendant's road, while by the more direct line to Omaha the distance to that point is relatively less, as above stated. Taking the shortest route to each point as the basis, the disparity in rates corresponds quite closely with the difference in distance.

Complainants, however, appeal to a principle, said to be acknowledged in making freight rates, that with the increase of distance the ratio of the rates shall decrease. This principle is generally acknowledged when the rates are based upon distance and cost alone, and are not affected by other modifying conditions; and its justice arises from the obvious fact that the expense of transportation does not increase in proportion to the distance, many of the elements which unite to make up the cost of handling freight being the same whether the terminal points be more or less widely separated; it is easily perceived, however, that other considerations may often affect the application of the rule. (*Business Men's Ag.*

*sociation of Minnesota v. Chicago, St. Paul, Minneapolis and Omaha Railroad*, 2 I. C. C. R., 52.) In the present case, for example, the Omaha rate is confessedly not based alone upon the mileage of the defendant road to that city, but as several lines from Chicago concentrate at Omaha the mileage of the shortest route is the one which naturally and practically governs in the determination of the rate. Moreover the different routes which are traversed by the various lines competing for traffic from Chicago to Omaha, with their various points of intersection, cannot be overlooked. It appears that the Omaha rate is also the Missouri river rate, precisely the same charged at a large number of points above and below that city, which are reached by one or another of the various roads which compete for Missouri river traffic. It is not claimed that this fact involves any impropriety or any violation of law. On the contrary its justice appears to be conceded; and the result is, to a large extent, brought about by obedience to law. Prior to the passage of the Act to regulate commerce, points in Nebraska on the line of the Missouri Pacific, like Louisville, Dunbar, Weeping Water and Falls City, were charged higher rates than were given to Omaha, at a greater distance over the same line. Many points in Western Iowa were treated in a similar way. Now the rate to all such points is made no greater than the rate to Omaha. Lincoln was also formerly favored in the same manner as Omaha. The result of the operation of the law, among other things, has been that points near the Missouri river in Nebraska, and points in Iowa along the lines running east from the Missouri river, receive through rates which are much less than any they have formerly known. The Omaha rate in fact comes in use upon the defendant's line at a point 90 miles east of Omaha, and the mileage comparison might as well be made at the eastern end of the group as the western. If so made the Lincoln rate would obviously be greatly below the increase due to the increase of the distance.

Moreover it is shown that the rates from Omaha and from Lincoln to interior Nebraska points are so arranged that the rates from Chicago are practically the same, whether the freight is handled by jobbers at Omaha or at Lincoln, so

that the latter in fact suffer no prejudice in the actual conduct of their business as compared with their Omaha competitors.

As has been previously said by the Commission, the extent of traffic carried and the character of the country traversed are necessarily to be considered in applying the rule appealed to. The ratio of rates charged through the sparsely settled regions of the distant West cannot decrease in proportion to distance without depriving the carriers of necessary revenue. And while such a condition may not exist in the fertile regions about Lincoln, nevertheless the interests of that locality are chiefly agricultural; there are no ores, no lumber, no stone, no coal, to increase the revenues of the carriers; the business of the roads is almost wholly confined to supplying the necessities of a farming population and the distribution of farm products; although the traffic so afforded is considerable, and when concentrated at eastern terminals is immense, nevertheless the possibilities of tariff reduction afforded by roads which are largely fed by mineral resources, quarries and manufactures, cannot be fairly expected at the present time upon the numerous lines which interlace themselves throughout the purely agricultural State of Nebraska.

The application of the principle in question is also frequently affected by the fact that the rate for the shorter distance is of itself a low one; often too low to be treated as a fair criterion for points beyond. It sometimes happens that a road having a long mileage to a given point is there met by a much shorter line which makes a rate just and reasonable on its part, but not fairly remunerative if the distance of the longer line is alone to be considered. In such a case the longer line, conforming to the law, must give a rate no greater than that fixed by its competitor to the given point and also to intermediate points on its line; but when the given point is passed it may fairly increase its charges with some consideration of the absolute distance by its own line from the originating point, and in a ratio more rapid than the proportionate charges would have otherwise shown, had it been able to grade its own rates continuously throughout

its line. The same effect is at times produced by water competition and other controlling causes. Omaha is situated upon a large navigable stream and although the Missouri river does not at present afford active competition with the carriers by rail, nevertheless its existence and its possibilities are potential in maintaining low rates along its banks.

These various considerations are necessary factors of the situation, and in view of them it is clear that the complaint of the Lincoln Board of Trade against the existing rates to that city is not well founded. In fact it does not seem probable that this complaint would have been presented had the rates when it was filed been the same as they were afterwards made. The disparity between the rates to Omaha and those to Lincoln is now slight. It is no more than the distance appears to fairly call for, especially when considered in connection with the other conditions which surround the case. The hope apparently entertained by the petitioners, that some basis could be found whereby the same rates might be given to Lincoln as to Omaha, has not been supported by the proofs; in fact, as the matter now appears, no such arrangement could be made without affording to the citizens of Omaha a substantial grievance. The Commission has already decided that the existing system of through rates to interior Nebraska points is not an undue prejudice against Omaha under the Act to regulate commerce. (*Martin v. Chicago, Burlington, and Quincy Railroad Company et al.*, 2 I. C. C. R., 25.) The rights of that city are entitled to full consideration however, and having viewed the subject with care from the stand-point of each party, the Commission finds that the rates now established by the carriers apparently work out substantial justice to both.

The petition is therefore dismissed.

THE LINCOLN BOARD OF TRADE v. THE MISSOURI PACIFIC RAILWAY COMPANY.

Distance by shortest route is properly to be considered in determining the propriety of rates by a longer competing line.

Rates from St. Louis to Omaha a little higher than those charged to Lincoln, which is a trifle less distance upon a branch line, sustained under the peculiar circumstances of the case.

Consideration should be had of consequences which might follow a modification of the principle upon which the rates complained of are constructed.

The general plan upon which rates are constructed from Chicago and St. Louis to Missouri river points and interior Nebraska points approved, no better system being as yet suggested. Difficulties which might result from throwing this system into confusion stated.

The operation of the fourth section of the Act controls the extent to which Missouri river rates extend into the interior of Nebraska and Kansas; Lincoln and other towns lying west of that line must accept their geographical situation and its consequences.

Tried at Lincoln, Nebraska, March 23, 1888.—Filing of Briefs completed May 23, 1888.—Decided August 11, 1888.

*G. M. Lambertson* and *O. P. Mason*, for Complainants.  
*B. P. Waggener*, for Defendant.

REPORT AND OPINION OF THE COMMISSION.

WALKER, *Commissioner*:

This complaint alleges violation of the Act to regulate commerce in the rates established by the defendants from St. Louis, Missouri, to Lincoln, Nebraska. Said rates are alleged to be from ten to fifty per cent. higher than the rates from St. Louis to Omaha, and to work an undue preference against Lincoln in favor of Omaha. It is averred that "during the last twelve years Lincoln has enjoyed Omaha rates, and these rates must be guaranteed in future, or the distributing trade, manufacturing business, and local importance of Lincoln will be greatly injured. The city is now a large business centre, with 45,000 population. Her enterprises include four large grocery and other jobbing houses, two extensive packing-houses, and other manufacturing industries

The effect of this is, that after deducting the above-named St. Louis differentials from the agreed Chicago rate, the rates from St. Louis to all said Missouri river points remain identical.

Prior to April 5, 1887, the first-class rate from Chicago to Omaha had been 90 cents, to Lincoln 104 cents. The tariff then put in effect was, to Omaha 90 cents and to Lincoln \$1.00. At the same time rates to intermediate points were made no higher than to more distant points, the contrary practice having previously prevailed. Some changes were made in August 1887, and on December 20th a new tariff was issued, which in fact did not become operative until March 26, 1888, making the first-class rate, Chicago to Omaha, 75 cents and to Lincoln 80 cents.

In April 1887 this defendant was at first uncertain whether it would unite with the other lines in the rates above stated, in view of the loss of revenue involved upon its business at intermediate points ; after consideration it determined to do so, and its rates from St. Louis therefore became at first 70 cents to Omaha and 80 cents to Lincoln, and afterward 55 cents to Omaha and 60 cents to Lincoln, at which point they now remain. The rates on the other classes were proportionately less, and need not be stated in detail.

The result is that precisely the same difference exists between the rates from St. Louis to Lincoln and to Omaha, which have been considered in another case in respect to the rates from Chicago to said cities respectively, ranging at the present time from five to three cents per hundred upon the different classes of merchandise. *Lincoln Board of Trade v. Chicago, Burlington and Quincy Railroad et. al.*, 2 I. C. C. R., 147.

The cases differ, however, in this, that while Lincoln is a greater distance from Chicago than Omaha, it is a little nearer to St. Louis than is Omaha. A further anomaly is also here presented in the fact that freight from Kansas City and points south thereof is delivered at Lincoln and Omaha by the defendant upon identical rates, while freight from St. Louis through Kansas City and thence to Lincoln and Omaha, over precisely the same line of road, is subject to the aforesaid difference of charge.

Two justifications for this increased charge on business from St. Louis to Lincoln are relied upon :

*First.* The fact that Lincoln is upon a branch road and the transportation to that point is more expensive than to Omaha. The road from Weeping Water to Lincoln is undoubtedly a branch road, but it is a road easy of operation, and over which a considerable amount of traffic is handled. The Lincoln terminals were donated, while the Omaha terminals were costly. The traffic to Omaha is much the largest, and upon a comparison of volume simply an estimate was made that the expense of handling the Lincoln business was two and three-quarter times that of handling the Omaha business. The details of the computation were not given, and it is obvious in such a matter many other things besides the mere volume of business should be taken into account. The comparative length of the two pieces of road, the grades, crossings and bridges, the interest upon the cost, the facility with which trains may be handled, and many other matters, which might be suggested, would be clearly material in order that such a comparison should be usefully made. It is sufficient for present purposes, however, to say that the fact that a difference is made upon St. Louis and Mississippi river business only, and not upon business originating at other portions of the defendant's system, points significantly to the conclusion that the real reason for the difference made in the St. Louis traffic is something else than because Lincoln is situated upon a branch line. So far as the question here involved is concerned, this fact is clearly to be treated rather as a fortunate make-weight than as the operative cause of the difference in the rates.

*Second.* A more efficient and no doubt the real reason why the rates from St. Louis to Lincoln are higher than the rates from St. Louis to Omaha is presented in the fact that the rates from Chicago are also higher by precisely the same figures, a uniform system of working rates between the two sections having been agreed upon which is carried out by all the lines.

This throws back the question to a consideration of the propriety of the existing rate from St. Louis to Omaha,



which is 20 cents less than the rate from Chicago to Omaha, although the distance from St. Louis by the defendant line is a little greater than the distance from Chicago by the more direct route, and although the distance by defendant's line from St. Louis to Kansas City is but little more than half the distance to Omaha, while the rates charged are identical. In justification of its comparatively low rate from St. Louis to Omaha the defendant points to the Wabash system, which has a road from St. Louis to Omaha that is considerably shorter than any line from Chicago to the same place; and this we find to be in fact the controlling feature of the situation. The differential is given to Omaha on St. Louis business because of the short line to that point made by the Wabash; over that route the difference is not greatly disproportionate. The differentials, from 20 to 5 on the various classes, are apparently a little too great at Omaha and too small at Kansas City, applying their percentage to the shortest route in each case; for the purpose of a rule applicable to all Missouri river points they approximate equity.

Rates having been thus established from St. Louis to Omaha in view of the distance over the Wabash line, it became necessary for the Missouri Pacific to accept the same rates or to retire from Omaha business. After consideration of the situation it decided not to abandon the traffic, and announced that it would meet the Wabash rates, although considered too low to be greatly desirable for its longer line, and although much loss of former revenue at intermediate points on the main line south of Omaha was involved by the application to the situation of the long and short haul clause of the Act to regulate commerce. This course was entirely within defendant's right and cannot be properly criticised.

But the question is not yet answered whether, having met the Wabash rate at Omaha, the defendant should not give Lincoln the same terms. Complainant insists that it should, because the distance is a trifle less, and because Lincoln, as the centre of a thriving trade, is entitled to protection against all rivals. Defendant, on the contrary, points to the fact that the rate which it makes to Omaha is not a matter of



favor, but of necessity. It insists that it gives Lincoln equal rates with Omaha upon all business coming from a direction where there is no competition by a shorter route. It shows that the discrimination in the St. Louis rate between traffic to Omaha and to Lincoln has been reduced nearly one-half since the filing of the petition. It avers that the existence of the difference which remains is not due to any wish on its part to unduly prejudice the city of Lincoln. It claims that the rate from St. Louis to Lincoln is not of itself unreasonable. It alleges that the general scheme on which rates are made throughout the vast territory covered by the roads that have united in the existing tariffs, requires that the existing difference between Omaha and Lincoln should be preserved upon traffic from St. Louis as well as from Chicago; and it insists that the fact that a low rate from St. Louis is forced upon it by competition at Omaha should not be taken advantage of to compel a corresponding reduction upon its Lincoln branch.

This legal question is therefore presented: Is the preference in question undue and unreasonable?

Under all the circumstances, we are inclined to the opinion that it is not. In reaching this conclusion we are influenced to some extent by considering what consequences might result from a contrary decision. It is clear that questions of this kind must be determined upon broader principles than mere comparisons of mileage. If the rule contended for by complainants is enforced, Kansas City, Leavenworth and Atchison might allege that their distance from St. Louis is very much less than that of Lincoln, nevertheless they are charged the same rates, to their prejudice in competing for the trade of Northern Kansas and Southern Nebraska. It would be difficult for Lincoln to resist such a claim, except by taking the position that the general good of the territory west of the Missouri is best subserved by the maintenance of rates upon the present plan—that is, by giving identical rates from Chicago to all Missouri river points, and to such points west of the river as the exigencies of the fourth section of the Act to regulate commerce require, and increasing gradually from that line to the west. Lincoln is situated some

thirty or forty miles west of the line so drawn. This line was not the creation of the defendant, nor was it established for any willful purpose to wrong complainants' thriving city. It exists by reason of the application of the provisions of a new law to previously established facts. A disregard of its presence and importance might produce many complications, some of which, as above suggested, would be greatly injurious to Lincoln. The withdrawal of defendant from its present competition with the shorter line at Omaha would at once permit an increase of the rates at a large number of points in Eastern Nebraska and Kansas, causing much disaster and hardship. To order a reduction in the St. Louis rate at Lincoln would naturally involve the rates at many points south and west of Lincoln, not only upon the defendant line, but upon other roads as well.

Moreover it is difficult to see from the proofs that any substantial damage is effected by the difference in rates complained of. It is in evidence that the distributing rates from Lincoln are so arranged in comparison with those from Omaha that the difference in the rates to these points is equalized. To this complainants reply that this is not done by the defendant road, but by another. That is also true; but nearly all points available to Lincoln jobbers are reached by lines over which the adjustment is made. The fact therefore exists, and is an answer to the claim that the Lincoln merchants are damaged, in comparison with Omaha merchants, by the disparity in rates complained of. The disparity exists as to merchandise which is consumed at Lincoln; but for this the situation of that city, a substantial distance west of the line of common rates from eastern points, must be held responsible.

So long as the present system of making rates to Nebraska is maintained, the geographical position of Lincoln appears to warrant the difference made between the rates from Chicago and St. Louis to Lincoln and to Omaha. While it is not impossible that some better system may hereafter be devised none has as yet been suggested.

In view of these considerations the complaint is held to be not sustained.

THE KENTUCKY AND INDIANA BRIDGE COMPANY  
v. THE LOUISVILLE AND NASHVILLE RAIL-  
ROAD COMPANY.

Complaint filed February 10, 1888.—Tried March 7, 8, 9, 1888.—Filing of Briefs completed March 29, 1888.—Decided August 2, 1888.

The Kentucky & Indiana Bridge Company has the chartered powers of a common carrier and is such *de facto*. It is therefore under the Act to regulate commerce entitled to demand of railroad companies whose lines are intersected by its tracks, the same reasonable, proper, and equal facilities for the interchange of traffic and for the receiving, forwarding, and delivering of property that may lawfully be demanded by other carriers under that act.

The Louisville & Nashville Railroad Company united with other companies having lines terminating on the Ohio river at or opposite Louisville in a contract whereby it was agreed that all their business across the river at that point should be taken over the Louisville bridge. The Louisville Bridge Company was a party to the contract, and the tolls were dependent on the amount of business done, and were diminished as the debt of the bridge company was paid off from funds derived from tolls. A new bridge being constructed over the river at this point, one of the railroad companies which had contracted to take all its business over the old bridge, transferred the business to the new bridge. The Louisville & Nashville Railroad Company thereupon refused to receive for transportation over its line any freights which had been brought over the new bridge in violation of the contract made with it.

*Held*, that this refusal was unlawful.

A common carrier by rail to which property is offered for transportation cannot in this indirect manner and by refusal to perform obligations imposed by law upon it, enforce its contracts, but must for that purpose resort to the customary remedies.

Nor can a common carrier as a reason for refusal to afford to another common carrier the customary reasonable and equal facilities for the interchange of traffic, assign the fact that such other common carrier supplies no public necessity, the public having been fully accommodated without it. All railroads created by competent public authority must be conclusively presumed to be public conveniences, and other common carriers cannot refuse to exchange traffic with them on any suggestion or showing to the contrary.

The fact that statutory regulations of internal commerce are such as to preclude the literal enforcement of pre-existing contracts, does not affect their validity or make them in a constitutional sense laws impairing the obligation of contracts. Such a consequence is often a necessary result of any considerable change in the general laws, and must be submitted to as such.

When a question of rates as between two carriers is involved, the commission will express no opinion upon it in a case to which one of the carriers is not a party.

*E. T. Trabue, Ramsey & Maxwell and Bullitt & Shield*, for Complainants.

*Ed. Baxter and Lyttleton Cooke*, for Defendants.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman* :

The petition in this case avers that petitioner is a corporation created by the consolidation of an Indiana corporation and a Kentucky corporation of the same name, and exists under and by virtue of the laws of the States of Indiana and Kentucky; that the Louisville and Nashville Railroad Company, defendant herein, is a corporation created and existing under the laws of Kentucky and Tennessee.

That petitioner owns and operates a bridge for steam railway and other purposes across the Ohio river between the city of New Albany, Indiana, and the city of Louisville, Kentucky, and a railway extending from New Albany across the bridge into Louisville; that defendant owns and operates a railroad extending from the city of Louisville southwardly through the State of Kentucky to the city of Nashville, in Tennessee, with various branches and connecting roads.

Petitioner avers that in the city of New Albany petitioner's railway connects with the railway of the Ohio and Mississippi Railway Company, which operates roads extending thence into the States of Indiana, Illinois, and Ohio, thereby reaching the cities of Cincinnati and St. Louis. Petitioner's railroad at New Albany aforesaid also connects with the railroad of the Louisville, New Albany and Chicago Railroad Company, which extends from New Albany to Chicago, and over and by means of the railways mentioned petitioner reaches all the principal points of commerce in the United States north of the Ohio river.

It avers that its railway also extends from the southern end of its bridge in Louisville to the railway of the defend-

ant, connecting therewith at the intersection of Seventh street and Magnolia avenue, in the said city of Louisville, and in defendant's freight yard; that the connection is complete, and affords an easy and convenient means of interchanging cars, freight, and all business between the petitioner and defendant and any railway company using or which may use the railway of petitioner, and such interchange of cars, freight, and other business can be made without any use of the terminal facilities of defendant.

That by section 18 of the charter of defendant, enacted by the Legislature of Kentucky, it is provided that any railroad or railway thereafter constructed under the authority of the Legislature of Kentucky may connect and join with the railroad of defendant; and the railway of petitioner has been constructed in said city pursuant to the authority of the Legislature of Kentucky since the date of defendant's charter.

Petitioner avers that it is a common carrier, and engaged in the transportation of freight and passengers wholly by railroad, between the cities of New Albany and Louisville aforesaid, subject to the provisions of the Act to regulate commerce; that defendant is a common carrier of freight and passengers over its railway and engaged in interstate commerce; and that petitioner and defendant, respectively, habitually hold themselves out to the public as common carriers of freight and passengers over their lines of railroad, respectively, subject to the provisions of said Act to regulate commerce; that by its charter petitioner is required to receive from and for the Ohio and Mississippi Railway Company, the Louisville, New Albany and Chicago Railway Company, and all other companies, persons, or shippers demanding it, car-loads of freight destined to any point on or beyond and by way of its lines in either direction, and that it is now receiving large amounts of freight from the two companies last mentioned, and from other companies and individuals at New Albany aforesaid, for transportation over its bridge and railway to points upon and beyond and by way of the railroads of the defendant, and which petitioner has tendered to defendant at said connection with its railroad at Seventh street and Magnolia avenue, for transportation

by defendant from that point over its road and connecting railroads.

But petitioner avers that in violation of law the defendant, in combination and conspiracy with the Louisville Bridge Company, a corporation owning the only other bridge across the Ohio river between Louisville and New Albany, and with other railroad companies interested in said last-named bridge, for the purpose of preventing the transfer of freight over petitioner's bridge and compelling the railway transportation of freight across the Ohio river at Louisville to be made over the bridge of the Louisville Bridge Company, has refused and now refuses to interchange traffic between the railways of petitioner and defendant, or to receive from petitioner, or railway companies using its track, at said point of connection, cars of freight tendered to defendant for transportation over its railroad to points thereon and beyond and by way of said railroad, or to deliver to petitioner, or any railroad company using its track, freight arriving by defendant's railroad at Louisville for, or consigned to points on petitioner's railway or any railroad connecting therewith at New Albany, although defendant affords such facilities for interchange of traffic to said Louisville Bridge Company.

Wherefore petitioner prays that the defendant be required by the order of the Commission to interchange traffic with petitioner, and with the railway companies using its railroad, at said point of connection at Seventh street and Magnolia avenue, and to receive from petitioner and said railway companies using its railroad all freight tendered by it or them to said defendant for transportation to points on or beyond and by way of its railroad or railroads, and to deliver to petitioner and to the railroad companies using petitioner's railroad, at said point of connection, all freight arriving at Louisville over defendant's railroad and consigned to petitioner, or to railroad companies using petitioner's railroad, or to points on the line of petitioner's railroad or the railroads of companies using its track.

The answer of the defendant is very long, and it is not material for the purposes of this case that it be recited at length. The existence of the petitioner is conceded and its

ownership of the bridge across the Ohio river, but it is not conceded that it is a common carrier. Defendant says it is advised by counsel that under its charter other companies thereafter incorporated under the laws of Kentucky have the right to connect with defendant's road, but that defendant is not compelled to make any such contracts with petitioner as are necessary to be made in all cases where an interchange of traffic between two companies is to be conducted.

Defendant describes its freight yards in the city of Louisville, of which it has four; it says that the physical connection made by petitioner's railway with defendant's railway is between the third and fourth of these yards, and it denies that such connection affords an easy and convenient means of interchanging traffic between defendant and petitioner, or between defendant and the railways using the railway of petitioner; and it also denies that such interchange can be made without the use of defendant's tracks and terminal facilities by petitioner; and defendant specifies many reasons why the place of such connection is not a convenient place for the interchange of business.

Defendant admits that it has refused and now refuses to interchange traffic between the railways of defendant and petitioner at the point of connection at Seventh street and Magnolia avenue, or to receive from petitioner or from railways using its track at that point cars of freight tendered to it for transportation, or to deliver to petitioner at that point freight arriving by defendant's railroad at Louisville consigned to points on petitioner's railway or any railroad connecting therewith at New Albany. It admits that it affords facilities for the interchange of traffic passing over the bridge of the Louisville Bridge Company, but this is done at one of respondent's regular yards, where it has all the force and facilities necessary for the business.

Defendant denies that either in the interchange of traffic which crosses the bridge of the Louisville Bridge Company, or in refusing to interchange the traffic which crosses the petitioner's bridge, defendant is acting in violation of law or in conspiracy with the Louisville Bridge Company or with any railroads interested therein. It is true there are two



bridges across the Ohio river at Louisville. Defendant on June 5, 1872, entered into a written contract with said Louisville Bridge Company and with the Jeffersonville, Madison and Indianapolis Railroad Company and the Ohio and Mississippi Railroad Company to the effect that freights coming from points north of the Ohio river destined to defendant's railroad or to railroads connected therewith should be transported over the bridge of the said Louisville Bridge Company. Defendant has felt and still feels that it is legally and morally bound to comply with said contract, in letter and in spirit, and one of the reasons why defendant has refused to interchange traffic with petitioner at the point of connection of their tracks is because in defendant's opinion it would be a violation of said contract, and of other contracts existing between defendant and other parties, entered into in good faith and to subserve the interest and convenience of its patrons.

Defendant then proceeds to state the following facts: Prior to the construction of the Louisville Bridge Company's bridge all freights, mails, and express goods to and from points north of the Ohio river destined to defendant's road and its connections had to be ferried across the river on boats and hauled through the streets of Jeffersonville and Louisville. The difficulties and expense of this traffic are stated, and because of these defendant says it was concluded to bridge the river, and defendant subscribed \$300,000 of the stock of the Louisville Bridge Company. The bridge was built at a cost of \$2,300,000, represented by \$1,500,000 of stock and \$800,000 of bonds.

About the time the bridge was completed, to wit, June 5, 1872, a written contract was entered into between the Louisville Bridge Company and the Jeffersonville, Madison and Indianapolis Railway Company, the Ohio and Mississippi Railway Company, and the defendant, whereby in substance it was agreed that the tolls and charges for the use of said bridge by said railroad companies should be fixed at rates that should not be in excess of a sum sufficient to produce in the aggregate an amount equal to the cost and expense of keeping the approaches and its bridge in repair, paying



semi-annual dividend of six per cent. upon the capital stock, the interest upon the bonds, and a sinking fund sufficient to pay off the bonds at maturity, and an amount sufficient to keep up the corporate organization of the bridge company, including taxes; and in the event the bridge should be destroyed by casualty, additional seven per cent. bonds were to be issued by the bridge company, and sufficient charges were to be made against said railroad companies to meet the interest and sinking fund upon such additional bonds.

It was provided that said charges and tolls should be from year to year reduced in proportion to the reduction of interest on said bonds by the operation of said sinking fund, and that they should always be the same to each of said railway companies. Said contract contemplated that other railroad companies should thereafter be allowed to use said bridge; that all tolls and charges paid by such other companies should be applied to and form part of the fund provided by the contract for the payment of expenses, sinking fund, etc.

It will be seen by this statement that as the sinking fund increases and the amount of outstanding bonds is diminished, defendant's charges and tolls for the use of the bridge are proportionately diminished. Said bonds are now nearly all paid off; when fully paid the tolls and charges will be reduced to a sum sufficient to keep the bridge in repair, maintain its corporate organization, pay taxes, and the dividend on its stock. It will further be seen that when other railroad companies are induced to use said bridge the payments made by them will also tend to reduce the tolls and charges which defendant must pay.

It is therefore greatly to the interest of defendant to continue its contract arrangement with the Louisville Bridge Company, and it is proper that it should endeavor by all fair and legal means to induce other railroad companies to use that bridge. It is also manifest that if petitioner can succeed in getting the Ohio and Mississippi Railway Company, or other companies, to withdraw their traffic from the Louisville Bridge Company, or in compelling defendant to divert any portion of its traffic to petitioner's bridge, it will proportionately increase the tolls and charges which defendant will

have to pay to said Louisville Bridge Company in discharge of its obligations under the contract of June 5, 1872.

Defendant then refers to other contracts supposed to have some bearing upon the controversy; avers that it was authorized to enter into them by its charter; says that the bridge of the Louisville Bridge Company is the natural connection and traffic ally of defendant, while the parties concerned in petitioner's company are the avowed enemies of defendant, and are doing all that is in their power to injure it. The answer closes with an averment that defendant has no traffic arrangement with petitioner; that it does not interchange traffic with other companies except in pursuance of agreed arrangements, and that petitioner has no license or permission from defendant to make use of any part of its roads, or to transport persons or property thereon.

Upon the issues thus presented the case was heard on testimony taken orally, and the parties presented their views in oral arguments and afterwards in elaborate briefs. We find the facts established by the evidence, so far as we deem them important to the decision of the legal questions raised, to be as follows:

The Louisville Bridge Company was incorporated by the Commonwealth of Kentucky March 10, 1856, and the charter was amended February 19, 1862. The amended charter contains provisions giving the company authority to contract with railroad companies "to warrant the annual profits of the bridge to be built by said company shall be equal to the keeping the bridge in repair and of its operation, and that the net earnings shall be equal to six per cent. on a cost of one million dollars." Also to contract with any railroad company "for the annual use of said bridge by the cars or for the purposes of said railroad company." Also that "any railroad company incorporated by the Commonwealth of Kentucky may lawfully subscribe to the stock, or make the guarantees and agreements authorized by the preceding sections of this act, when authorized by the stockholders at some general meeting."

By act of Congress approved February 17, 1865, a previous act of July 14, 1862, was so amended as to authorize

the Louisville and Nashville Railroad Company and the Jeffersonville Railroad Company (stockholders in the Louisville Bridge Company) to construct a railroad bridge over the Ohio river at the head of the falls of the Ohio, and the bridge when constructed was declared to be a lawful structure.

Under the legislation above mentioned the capital stock of the Louisville Bridge Company was subscribed for by the Jeffersonville, Madison and Indianapolis Railroad Company, the Louisville and Nashville Railroad Company, and certain other corporations and individuals, the Louisville and Nashville Railroad Company subscribing for \$300,000 thereof.

On June 5, 1872, a contract was entered into between the Louisville Bridge Company, party of the first part, the Jeffersonville, Madison and Indianapolis Railroad Company, party of the second part, the Ohio and Mississippi Railway Company, party of the third part, and the Louisville and Nashville Railroad Company, party of the fourth part, in which it was recited that the capital stock of said bridge company was \$1,500,000 and its mortgage debt \$800,000, evidenced by bonds to mature December 1, 1888, bearing interest at seven per centum, payable semi-annually.

The contract contained stipulations as follows:

*First.* "That the second, third, and fourth parties agree respectively to use said bridge as is hereinafter covenanted."

*Second.* That the first party agrees "that the tolls and charges over and for the use of said bridge and its tracks owned by the first party in the transportation of freight, passengers, mails, and other goods received from or delivered to the roads of said second, third, and fourth parties, per ton and per passenger, or per car, engine, or other means of transfer over said bridge, shall be fixed on signing this agreement, and shall not be in excess of a toll or charge sufficient to produce in the aggregate a sum equal to the cost and expense of keeping in repair and taking care of said bridge owned by the first party, paying a dividend semi-annually of six per cent. on said capital stock of fifteen hundred thou-

sand dollars, the interest upon said bonds as the same matures and becomes payable, a sinking fund sufficient to pay off said bonds of eight hundred thousand dollars at maturity, the amount necessary to keep up the corporate organization of the first party, with its proper officers and servants, and such taxes as may be chargeable against said bridge company on said bridge or other property pertaining thereto or otherwise."

*Third.* "It is understood and mutually agreed that said charges and tolls shall from year to year be reduced, in proportion to the reduction of interest on said bonds by the operation of said sinking fund."

*Fourth.* "That the tolls and charges shall always be the same to each of the second, third, and fourth parties."

*Fifth.* "That the tolls and charges to other railroads, or railroad companies, for like use of said bridge and the approach owned by the first party, shall not be less than those charged to or incurred by the parties hereto."

*Sixth.* "That all such tolls and charges paid by other railroads or railroad companies shall be applied to and form a part of the fund hereinbefore provided for the payment of expenses, sinking fund, interest, dividends, and taxes, the same as if paid by the second, third, and fourth parties."

*Seventh.* "In the event said bridge or its appurtenances shall be injured by floods, ice, or other casualty, or by crystallization of the iron or other inherent decay, so as to render the same useless or dangerous, and it shall become necessary to rebuild the whole or any material part thereof, involving an expenditure greater than could be realized from a judicious amount of guaranteed rates and charges," then an additional number of bonds were to be issued to yield a fund sufficient to renew and repair the bridge, and in that event the tolls and charges were to be increased, so as to provide for the payment of the interest on such additional

bonds and to provide a sinking fund to retire them at maturity.

*Eighth.* The second and third parties each severally agrees "that it will pass over the said bridge all the freight, passengers, mails, express matter, and other goods carried on and over their roads, to and from Louisville and to and from points which require their passage over the Ohio river at or near Louisville, during the existence of this agreement, and will pay punctually to the party of the first part the tolls and charges hereinbefore provided for the use by them, respectively, of said bridge and the tracks and approaches thereto owned by the first party."

*Ninth.* "The party of the fourth part covenants with each of the parties of the first, second, and third parts, their respective successors and assigns, that it will deliver to the said party of the first part, to be passed over the said bridge, or to the parties of the second or third parts, or to such other railroad company or companies as may for the time being be transferring freight, passengers, mails, express matter, and other goods over the said bridge, all the freight, passengers, mails, express matter, and other goods carried on and over its road, or any part thereof, destined for Jeffersonville, in the State of Indiana, or any other points which require their passage over the Ohio river at or near Louisville during the existence of this agreement, and will charge on said traffic, in addition to its rates for transportation service, the then established rates of tolls and charges, hercinbefore provided for the use of said bridge and approaches, and punctually pay the said tolls and charges to the first party."

*Tenth.* "The approach to said bridge at the north end thereof was owned by the second party, and the third party agreed with the second party to use said approach to said bridge in going into and over said bridge, and it was agreed between said second and third parties that all trains, cars, and engines passing over said approach, and over said bridge, 'shall be under the control and direction of the sec-

ond party, and that whatever rules are prescribed for the government of the trains, cars, and engines of the second party, in the premises, shall be equally applicable to the trains, cars, and engines of the third party, each being dealt with alike.' . . . 'And the second party hereby covenants to furnish all needful and sufficient engines for the service hereinbefore mentioned, and at all times to transfer with the same promptness and care over the said bridge the trains, cars, engines, and traffic of the parties of the third and fourth parts, that it does the trains, cars, engines, and traffic received from or to be delivered to its own road, the intention being that each of the parties shall enjoy equal facilities over said approach and bridge.' "

*Eleventh.* "For the service aforesaid of said engines of the second party, and the conducting and management of the same, and of cars, trains, and bridge, over the said approach and bridge, the second party shall be allowed a reasonable compensation, to be fixed on signing this agreement, to be apportioned between the parties hereto in proportion to the service to each, per ton and per passenger, or per car, engine, or other means of transportation as the parties may hereafter agree."

There was then a provision for the arbitration of differences arising between the parties under the contract, and a final clause as follows:

"This contract shall continue in force and operation until it shall be terminated by some one of the parties thereto giving notice in writing to the other parties of its intention to terminate the same at the expiration of two years from the giving of such notice; at the expiration of which two years the same shall terminate as to all the parties thereto included in such notice."

Since the contract was entered into the Louisville, New Albany and Chicago Railroad Company and the Louisville, Evansville and St. Louis Railroad Company have been allowed to use said bridge and its approaches in substantial accordance with its provisions. The tolls and charges for

the use of the bridge have been continually growing less as the traffic over it has increased. Several years ago an arrangement was made whereby the dividends agreed to be paid upon the capital stock of the bridge company were reduced from six to four per cent. semi-annually. The sinking fund provided for by the contract is now sufficient to pay off the bonds, and it is expected that they will be paid off when they mature in December next.

The complainant, The Kentucky and Indiana Bridge Company, was incorporated by the Commonwealth of Kentucky by special charter April 6, 1880. It was empowered "to locate, build, construct, and maintain, under the laws of the United States, a bridge for railway, wagon, street-railway, and all other purposes, between the cities of Louisville, Kentucky, and New Albany, in the State of Indiana, from any convenient and accessible point within the limits of the city of Louisville or within one mile thereof to any point in the city of New Albany, Indiana, or within one mile thereof," and to acquire by purchase or condemnation the necessary real estate for that purpose. It was further given power "to lay down on said bridge a single or double track for railroad cars or street cars, or for wagons or other vehicles, and all animals, and to erect footways for passengers, and to charge for the use thereof reasonable tolls; . . . and may also run any line of railway through the city of Louisville upon such terms as may be prescribed by ordinance of said city of Louisville, or along any street or alley, to connect with any railway bridge, transfer company, or depot, and shall have the right to operate or lease said connecting line or lines, and may charge a reasonable compensation for the use of the same."

On March 7, 1881, a corporation by the same name and for the same purpose was incorporated by the entering into and filing of articles of association under a general statute of the State of Indiana. The statutes of Indiana empowered a company duly incorporated to construct a railway with one or more tracks over its bridge and the embankments pertaining thereto, and to connect the same with other railway



tracks, and "to fix and alter at pleasure the rates of toll for all persons and property passing over said bridge and railway tracks connected therewith, whether on foot or horseback or in vehicles of any kind, or in cars propelled by steam or any other power." It was also provided that the company "shall have full power and authority to connect the line of railway over said bridge by continuous line of railway, in such manner and upon such route and terms as may be deemed most expedient, with any other line of railway whatever, and to maintain, use, operate, and control the said connection when completed, and charge and receive tolls for the use thereof."

The two corporations thus formed under the same name were subsequently consolidated under legislative authority which we do not understand to be questioned. On March 13, 1884, the Kentucky charter was amended, and the amendatory act provides, among other things, that the corporation "is authorized to contract with or to construct any railway or terminal line, either in Kentucky or in said State of Indiana, which may be necessary for completing its terminal facilities." Another amendatory statute, of date May 3, 1884, contained provisions that the company "is authorized to contract with or to construct any railway or terminal line, either in Kentucky or in the State of Indiana, which may be necessary for completing its terminal facilities, and may bond the same or may indorse the bonds of any corporation or company building such line or lines, or it may extend such branch lines through the city of New Albany, State of Indiana; and it may construct such line or lines in the county of Jefferson, State of Kentucky, as may be necessary to complete the connection with other railways or depots."

Consent of the city of Louisville to the construction of railway tracks by the said Kentucky and Indiana Bridge Company within its limits was given by several ordinances, one of which, bearing date November 4, 1886, provides that "the right herein granted is subject to the proviso that the Kentucky and Indiana Bridge Company shall permit the use of the said tracks by any railroad company now or hereafter



desiring to use the same under reasonable conditions not inconsistent with the use thereof by the said bridge company: *Provided, however,* That before such company shall be entitled to such use it shall tender to said bridge company reasonable compensation for same for one year, and shall agree to pay in each year thereafter reasonable compensation for such use: *And provided further,* That such railway company shall agree to and allow said Kentucky and Indiana Bridge Company to use the tracks of such railway company within the city of Louisville upon like reasonable terms."

Consent of the city of New Albany was also given to the Kentucky and Indiana Bridge Company "to build, construct, and maintain approaches, roadways, and embankments and trestles on, over, along, and across" certain specified streets, but without particularly designating the intended use of such approaches, roadways, &c.

On September 29, 1886, the Kentucky and Indiana Bridge Company entered into a written contract with the Ohio and Mississippi Railway Company which contemplated the abandonment by the last-named company of the pre-existing contract with the Louisville Bridge Company hereinbefore described, and the transfer of its business across the Ohio river at this point to the bridge of the Kentucky and Indiana Bridge Company. The important provisions of this last contract are the following:

"The bridge company agrees to allow the railway company to run its locomotives, cars, and trains over the Kentucky and Indiana bridge and approaches from a convenient point of connection at Vincennes street, New Albany, to the ground of the railway company at Fourteenth street, in Louisville, or, should the railway company elect so to do, to a connection with the track of the Short Route Railway Transfer Company near Thirteenth street, in Louisville; the railway company's locomotives, cars, and trains to have preference over those of a similar class of other railroad companies that

may use the bridge, so far as such preference can be legally granted by the bridge company."

The bridge company is to keep its bridges, approaches, and lines of railway in repair at its own expense; it agrees "to establish, provide, and maintain tracks connecting its present tracks with the tracks of all other railroads now seeking New Albany, within a reasonable time, either directly or through the use of the other railway lines, and to switch the cars of the railway company over such connecting tracks at a switching charge of \$1 per car; also to transfer cars from the railway company's transfer yard south of Bank street, in Louisville, to the L. & N. R. R. or the C. O. & S. W. R. R. at the same rate per car."

It is agreed that "the tolls shall be fixed at the same rate, from time to time, as the rate of the Louisville Bridge Company, and these tolls shall be paid monthly by the railway company to the bridge company, it being provided, however, that whenever the sum so collected shall exceed the sum of \$17,500 per quarter, any excess over such amount shall be paid back to the railway company, but the railway company agrees to pay to the bridge company \$17,500 per quarter, whether or not the amount of tolls so collected equals that sum; the intention being to give a fixed annual rental to the bridge company of \$70,000 per annum." But the railway company is to "endeavor with reasonable dispatch to clear itself of future liability for tolls, rentals, charges, or otherwise under its present contract for the use of the Louisville bridge, and until such liability shall be removed the railway company shall not be compelled to pay any tolls hereunder to the bridge company. And the Kentucky and Indiana Bridge Company may at its own cost, and in the name of said Ohio and Mississippi Railway Company, defend against any claim of liability on the part of said O. & M. R'y Co. under said contract."

"The railway company agrees . . . to carry and transport over said bridge, approaches, and railway tracks all of its locomotives, cars, freight, passengers, mails, express matter, and everything else carried or transported by it on its own line . . . destined or consigned to or from Louis-

ville, or to or from points which require their passage over the Ohio river at or near Louisville: *Provided, however,* That said railway company is at liberty, if it so desires, to perform its passenger service over any other bridge, but the rental to be paid hereunder shall not be decreased by reason thereof. The interchange of freight at Louisville and New Albany between said railway company and any connecting road shall be done over the tracks of the bridge company between the south approach to its bridge and the tracks of such connecting road, so far as the O. & M. R'y Co. can lawfully control the same, and the charge for the use of such tracks shall not exceed that on any other line."

"The railway company agrees, so far as it lawfully may, not to carry or transport over the said bridge and the approaches and tracks thereto any locomotives, cars, freight, passengers, mail and express matter between Louisville and New Albany that originates in or comes from any railroad or water line entering the one place and destined for the other, it being mutually understood and agreed between the parties hereto that the bridge company shall have the sole exclusive right to control, carry, and transport over the bridge and the approaches and tracks thereto all traffic not received from or destined to points reached over the railroad of the railway company north and east of New Albany.

"The railway company agrees to furnish at its own cost all motive power necessary for the transfer of its locomotives, cars, freight, passengers, mail and express matter transported by it over the said bridge and the approaches and tracks thereto."

"It is mutually agreed by the parties that each shall be alone responsible for all loss, damage or injury to its own locomotives, cars, machinery, and other property, as well as for all injury to its own servants, freights, and passengers, which may occur while its trains are being run and managed by its own engineer, conductor, and other trainmen on the said bridge and tracks, which may be caused by the negligence of its own servants; and in all cases wherein either persons or the property of persons not parties to this agreement shall be run against or over, or thereby shall be other-

wise injured by the engines or cars of either party, then in all such cases the party whose trainmen are at the time in charge of and operating such engines or cars shall alone be responsible. . . . In case of collision between the trains of the parties hereto, the party whose men or trains are at fault shall be responsible to the other party for all loss, damage, or injury sustained by it on account thereof."

The defendant company was incorporated March 5, 1850, "to construct a railroad from Louisville to the Tennessee line in the direction of Nashville," and with usual powers of railroad companies. One provision in the charter was that "it shall not be lawful for any other company, or any other person or persons to travel upon, or use any of the roads of said company, or to transport persons or property thereon, without the license and permission of the president and directors thereof;" but the power was reserved to the State of Kentucky to incorporate thereafter other railroad companies, and it was provided "that any and all such railroad or railroads hereafter constructed may connect and join with the road hereby contemplated." An amendment to the charter in 1860 authorized the company to "make arrangements with other companies for through freights and passage from distant points on such terms as they may agree from time to time."

The complainant after the construction of its bridge and approaches and certain railway or terminal lines in New Albany and Louisville, claimed the right, under the provision of the charter of the defendant above referred to, to connect the railway track of said bridge company with the track of said railroad company; and a physical connection of said tracks was made at the intersection of Seventh street and Magnolia avenue, in the city of Louisville. When this had been done complainant claimed a right to an interchange of traffic between itself, as a common carrier, and any railroad company that might make use of its tracks, with the defendant as a common carrier, at that point.

The defendant has in or near the city of Louisville, elsewhere than at the point of connection with the tracks of complainant, four freight yards, which it claims are fully ade-

quate for the transaction of all the business of the company, whether passenger or freight. It is not satisfactorily shown that this claim is not well founded, and for the purpose of a disposition of this case we assume that it is. At these yards an adequate force of clerks, inspectors, porters, etc., is kept by defendant for the transaction of its business and the making of exchanges.

Previous to the filing of complaint in this case freight was tendered in loaded cars by complainant to defendant at the point of connection of their tracks at Seventh street and Magnolia avenue, to be transported over defendant's lines to destinations specified, and defendant refused to receive the same. The grounds of refusal briefly stated were the following: That complainant is not a common carrier, and therefore not entitled to demand an exchange of traffic; that the freight tendered had been taken over the bridge of complainant by a party to the contract with the Louisville Bridge Company and in violation of the provisions of that contract; that defendant had ample facilities at its four freight yards for the exchange of traffic with connecting carriers, and was not therefore bound to afford further facilities at Seventh street and Magnolia avenue, and that in any event the party which should make demand for an exchange was not complainant, but the railway company making use of its bridge and taking freight over it. At the time of making such tender of freight, complainant was actually engaged as a common carrier in interstate traffic as hereinafter stated.

Upon these facts our conclusions will be briefly indicated,

*First.* We think the charter of complainant as given by the Commonwealth of Kentucky conferred the powers of a common carrier, and that such was the legislative intention. Whether the statute under which the Indiana corporation was organized had an intent equally broad may perhaps be open to question, but for the purposes of this case it is not very material. It is unquestionable that under the consolidation the complainant is proprietor of a bridge and of tracks which it lawfully operates, and which serve the purpose of a

Belt line in giving connection of the railroads on one side of the river with those on the other.

The power granted by the Commonwealth of Kentucky to construct and also to "operate" a line or lines of railway over the bridge and the approaches thereto, and to connect it with the lines of other parties has thus been acted on, and complainant by means thereof is engaged in interstate traffic; its passenger traffic being very considerable. It owns passenger cars and several locomotives, but no freight cars. This last fact is of no legal importance. The long lines of the country to a considerable extent lease or otherwise procure cars not owned by themselves, and if they thus procured all they used, they would none the less be common carriers and entitled to all the rights and privileges the act is intended to secure.

The chartered authority of complainant also contemplated that its bridge, approaches, and tracks would be used by other common carriers who would pay tolls or other compensation therefor. Such use by other carriers would not be inconsistent with the use by complainant as a common carrier also, but the effect would be to prolong the line of the carrier making use of the same to that extent, and thus enable it to deliver its traffic without other agency of the complainant, to such lines as could thereby be reached. By such prolongation of their lines the railroad companies reaching New Albany from the north and west may be enabled to tender traffic brought over complainant's bridge to the defendant in Louisville, and so long as by contract or otherwise any such company has the right to make use of complainant's railway and to run its locomotives and cars over the same, no connecting company to whom its traffic is offered can be heard to question the right to make use of complainant's line for the purpose. To bring the bridge and the traffic over it under the Act to regulate commerce, it is only necessary that the bridge be "used or operated in connection with any railroad," as it clearly would be in case the facts were as supposed.

*Second.* We hold that the point of connection at Seventh street and Magnolia avenue in Louisville is a convenient and

suitable point for making exchange of traffic between complainant and any carrier that may make use of its tracks, and the defendant.

On the oral argument counsel for the defendant made a statement on this subject which is repeated in a printed brief, and as there given is as follows: "I stated, in oral argument, that a mechanical connection had been made at that point, between the terminal railway of the Kentucky and Indiana Bridge Company and the track of the Louisville and Nashville Railroad Company, and that cars coming from the terminal railway of the Kentucky and Indiana Bridge Company, could be taken by the switch engines of the Louisville and Nashville Railroad Company and carried to the transfer station, at Ninth and Broadway, with but little, if any, more trouble or expense than cars were taken from the private sidings, which are connected with the tracks of the Louisville and Nashville railroad in Louisville; and I stated that I would not, therefore, consume the time of the Commission in contending that it was physically impracticable to make an interchange of traffic between the two companies at Seventh and Magnolia; nor would I attempt to make any calculation to show how much more expensive or troublesome it would be to make the transfer at Seventh and Magnolia, than it would be to make it at Ninth and Broadway. For all the purposes of my argument, I am perfectly willing to concede that Seventh and Magnolia may be regarded as a 'proper point for interchange of traffic between the Kentucky and Indiana Bridge Company and the Louisville and Nashville Railroad Company' so far as the mere trouble and expense of the interchange is concerned. I then regarded, as I now regard, that the real question at issue between the parties is, not so much as to *where* the interchange of traffic is to be made, as it is, *as to the right of the Kentucky and Indiana Bridge Company to demand an interchange of traffic at all.*"

This is a fair concession, and it states the fact as we should find it independently if no such concession were made. The defendant insists that complainant is receiving traffic from it



or in delivering traffic to it is to be treated as an individual manufacturer or trader in Louisville would be ; as a mere shipper, with whose charges as a bridge-owner or an owner of railway tracks the defendant has nothing to do ; that complainant must therefore pay Louisville rates on freight sent or received by it, and that so far from its having any rights as a common carrier by reason of the freight it tenders having been brought over its bridge, the defendant on the other hand may refuse to receive it for that reason ; at least if it comes from any company which is a party with defendant to the contract with the Louisville Bridge Company. When we decide as we do, that complainant is a common carrier, some part of this contention falls to the ground. Defendant we think, is bound to receive traffic from it under the Act to regulate commerce. The necessity to receive it at a point otherwise than at one of defendant's four yards is to some extent a hardship, but it is one that is very often found to exist and to be inevitable in the case of the construction of a new road. The whole expense, however, does not fall upon the old carrier. The new carrier must do its full share towards making provision for traffic exchange.

*Third.* The principal question in the case is the one stated by counsel qualifying the concession above made regarding the place for the exchange of traffic. And this question is not fully determined when it is held that complainant is a common carrier and entitled as such to traffic exchange. Conceding it to be a common carrier, it would still be contended on the part of the defense that the right to an exchange cannot extend to traffic offered to defendant by complainant, but which has been placed in his charge for the purpose by one of the parties to the contract with the Louisville Bridge Company and in disregard of the provisions of that contract. This is upon the ground that defendant has a right to hold the other parties to their contract obligations, especially when it appears that a violation of those obligations would be greatly to defendant's detriment.

To determine this question we should first see what are the provisions of the Act to regulate commerce which may have a bearing upon it.



The first section of the act makes the term "railroad" as used therein include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease. There can be no question, therefore, that the traffic carried on by common carriers over the bridge and tracks of complainant is under the regulation of the act, whether complainant is the carrier or some railroad company making use of its property for the purpose.

The third section of the act provides that "every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith; and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

The interchange of traffic here mentioned obviously does not mean mere local traffic. The act does not mean that the carriers regulated by it shall receive from each other, as shippers merely, the freight that may be offered, but it has in view traffic that has been taken up by one carrier and which at some point on its line is to be delivered to another. Such traffic is through traffic in the sense that it is to pass on or over more than one line. It is not mere local traffic that is taken up at one station of a carrier to be delivered at another of its stations. It is in respect to such through traffic that the act undertakes to compel the affording of "all reasonable, proper, and equal facilities." A carrier very obviously does not do this when it refuses to receive traffic from a connecting carrier otherwise than as from a shipper.

The question of the right of an interstate carrier to stand independently; to unite in no through rates, and to do no through billing, cannot be raised by this defendant in this case, for the very plain reason that it does not claim such a

right and in its dealings with other carriers act upon it. It makes through rates with the roads north of the Ohio river upon traffic to pass over its lines, and it gives through bills therefor. What it insists upon in this case is that it has a right to do this with some carriers and to refuse to do it with others. The claim of the defense is plainly stated in the brief of counsel as follows :

“ The L. & N. R. R. Co. is and has been at all times perfectly willing to deliver and receive to and from all railroad companies engaged in the transportation of freights to and from points north of New Albany, Jeffersonville, and Louisville, and upon the usual through rates, provided such freights are transported by said railroad companies across the Ohio river at Louisville upon the Louisville bridge. The L. & N. R. R. Co. will give no preference or advantage whatever to either one of those railroad companies over the other, provided they will all bring their freight across the river upon the Louisville bridge. But if, instead of using that bridge, they or any of them see proper to abandon it, and carry the freight across the river upon the K. & I. bridge, or any other bridge that may be built at or near Louisville, then the L. N. & R. R. Co. will decline to make through rates or through routes with such companies, and will insist upon treating them as Louisville customers, and charge them Louisville rates. It is for those railroad companies to say for themselves whether they will have the same through routes and through rates as the J. M. & I. R. Co. or not. If they will use the same bridge they shall enjoy the same through routes and the same through rates. But if they prefer to use the K. & I. bridge, or any other bridge at Louisville, thinking that it will be to their advantage to do so, they must take the consequences. But the preference or advantage which may arise in that event will not be one which is made or given by the L. & N. R. R. Co., but it will be one which the railroad companies themselves may see proper to make. They have a free choice of route, and must abide the result of their choice.”

This is the position of defendant, very plainly stated.

For taking it at all the defendant assigns its equities under the contract with the Louisville Bridge Company, and these are apparently very strong. It is also claimed that there are no reasons of a public nature for compelling it to receive traffic brought over complainant's bridge. The traffic of the Ohio and Mississippi Railway Company it says is fully as well and even more cheaply accommodated by the old bridge than by the new, and a number of English cases are cited to the point that in considering questions of undue preference, courts require it to "be clearly shown that the cause complained of occasioned inconveniences to *the public*, and regard must be had to the general convenience of *the public* rather than to the wishes or interests of individual *job masters*." *Ilfracombe Co. v. L. & S. W. Railway*, 1 Nev. & Mac., 61; *Beadell v. Eastern Counties Railway*, *ibid.*, 56; *Ransom v. Eastern Counties Railway*, *ibid.*, 112; *Caterham Ry Co. v. Brighton, &c. Ry Co.*, *ibid.*, 37; *Barrett v. G. N., &c., Railway Co.*, *ibid.*, 43, 44; *Painter v. L. B. & S. C. Railway Co.*, *ibid.*, 58.

To enable us to determine whether these English cases are fairly applicable to cases arising under the Act to regulate commerce, it might be necessary to examine the reasoning made use of in them in the light of the statute. But we do not think this important now, because if the principle here stated were admitted to be applicable in the United States, it would not in this case aid the defendant.

The point is not raised here by any "job master," but it is raised by a common carrier; by one of the class to which the Act to regulate commerce requires the defendant to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their respective lines, and those connecting therewith." Defendant refuses to afford complainant any such facilities whatever, and replies to its demand for them that traffic is sufficiently accommodated without, and the public has therefore no interest in the demand being acceded to. This seems to be equivalent to saying that on public grounds there is no reason for the existence of complainant's

bridge and tracks, and other carriers may ignore their existence altogether. The same principle, if accepted as sound, would justify the refusal to exchange traffic with any railroad company whose lines, long or short, could not be shown to have been built in response to some public demand. The New York, Lake Erie and Western Railroad Company, for example, might refuse to exchange freight with the New York, Chicago and St. Louis, and justify its refusal on proof that the road of the last-mentioned company was wholly unnecessary, the traffic which it now carries having been sufficiently accommodated by other lines before it was constructed.

Such a contention cannot be supported. All railroads in existence which are created under legislative authority must be conclusively presumed for all the purposes of the Act to regulate commerce, to be of public convenience. The fact that they are so is settled by the construction itself and the legislative or other proper public authority that was given therefor. Defendant cannot therefore refuse to exchange traffic with complainant, or with others making use of its tracks on any such ground as here suggested.

Some reliance is also placed by the defense upon the case of *Atchison, Topeka and Santa Fe Railway Company v. Denver and New Orleans Railroad Company*, 110 U. S., 677, in which it was decided that a provision in the constitution of Colorado that "all individuals, associations, or corporations shall have equal right to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers within the State," did not compel a railroad company which had given through routes and through rates to one railroad company to give them to its rival also. But the provision in the constitution of Colorado is very much less broad than that in the Act to regulate commerce; the requirement to afford "equal" facilities is not the same as the prohibition of "undue or unreasonable discrimination" in facilities; and when all the terms above quoted from the third section of the act are considered together, it is plain, we think, that a carrier

does not comply with the requirement to afford facilities without some active co-operation on its part in the receiving, forwarding, and delivering; and that a co-operation cannot be "equal" if it is restricted to one carrier or to less than all.

In its reliance upon its contract with the Louisville Bridge Company the defendant suggests the question of the constitutional power of Congress to pass any act which would invalidate the contract; and though counsel do not argue the question they insist that as a matter of construction the Act to regulate commerce should be given effect in such a way as to leave that contract in full force. To this point the language of Chief Justice Cockburn in *South Eastern Railway Co. v. Railway Commissioners*, L. R., 5 Q. B. Div., 231, is quoted. In that case the Chief Justice said:

"It seems to me next to impossible to suppose that Parliament, ever disposed to deal tenderly with vested rights, having conceded these powers and rights, as the basis of these great undertakings, could intend by a single blow to place these companies in a worse position than that of private ones. Having once made its bargain with a public company in a matter of commercial enterprise in the act by which the company is constituted and its powers conferred, the Legislature could not, unless such a power has been expressly reserved to it, with any consistency or justice, afterwards impose fresh obligations upon the company, or deprive it of any of the powers and vested rights, the grant of which had been the inducement to undertake the enterprise."

Again the same learned judge says in the same case:

"I cannot but think beyond question that interference with the self-government and financial management of railway companies once constituted and established would be an interference with vested rights. It seems to me to follow, that while there can be no doubt that Parliament in the plenitude of its legislative power can deal with such rights, yet that, looking to the tenderness with which vested rights are ever

infringed on, any legislative enactment in any way interfering with such rights must receive the strictest construction and be carried no further than the language of the enactment necessarily requires."

In support of the same doctrine *Nicholson v. Great Western R. Co.*, 1 Nev. and Mac., 150, is also cited by the defense.

The doctrine thus stated is not likely to encounter much dissent in the United States. In so far as it expresses a rule of right and justice it corresponds to the construction which the Federal Supreme Court in *Dartmouth College v. Woodward*, 4 Wheat., 519, gave to the provision in the Federal Constitution inhibiting the States from passing laws impairing the obligation of contracts. Whether the power of Congress is limited in this regard as the legislative power of the States is, is a question that is sometimes mooted, but the discussion of which we shall not enter upon. If it were conceded that Congress cannot by its legislation impair the obligation of contracts, the concession would in no respect affect the pending controversy.

The slightest examination of the Act to regulate commerce will make it evident that Congress has not undertaken thereby to meddle with contracts or to affect them in any way, except as they may incidentally be affected by the rules it lays down and the regulations it prescribes. Those rules and regulations are in the nature of police laws. They are prescribed that facilities created for the public benefit may not be abused; that right may be done and public conveniences of a certain class made as useful as possible. It is not one of the purposes of Congress that contracts shall be abrogated; much less that the obligation of this particular contract now brought to our attention, and which the act in no way refers to, shall in any particular be impaired or interfered with.

But the Act to regulate commerce is a general law, and contracts are always liable to be more or less affected by general laws, even when in no way referred to. This is the case with State laws as well as with Federal. There probably was never an act passed in restraint of the sale of intox-

icating drinks that did not affect some contracts, and render their literal enforcement impossible. The same may be said of the Federal revenue laws. Nothing is more likely than that a considerable change in customs regulations or customs duties, or in the provisions made for enforcement of excise laws will deprive some party of a right he supposed he had secured by contract. But this incidental effect of the general law is not understood to make it a law impairing the obligation of contracts. It is a necessary effect of any considerable change in the public laws. If the Legislature had no power to alter its police laws when contracts would be affected, then the most important and valuable reforms might be precluded by the simple device of entering into contracts for the purpose. No doctrine to that effect would be even plausible, much less sound and tenable.

But it does not follow that when we hold that defendant is bound to receive traffic offered to it by complainant, notwithstanding it may have come to it from the Ohio and Mississippi Railway Company, that thereby the contract between that company and the defendant is abrogated or its obligation impaired. On the contrary, if that contract was legal in its inception, and may be lawfully performed by the Ohio and Mississippi Railway Company, notwithstanding any provision contained in the Act to regulate commerce, then requiring defendant to receive such traffic from complainant or even from the Ohio and Mississippi Railway Company at the point of connection of the lines of complainant and defendant when tendered by the one or the other will not take from defendant the customary remedy for any breach of the contract. What we decide in this case is, that when the traffic is offered to defendant at the point of connection aforesaid, it is not at liberty, in view of the strong and positive requirements of the Act to regulate commerce, to take redress in its own hands, and if it finds that the traffic is affected by a previous breach of contract, then instead of affording "equal" facilities for it as required by the act, to refuse to afford any facilities. This is not the proper mode for obtaining redress in case of even unquestionably legal contracts; the law prescribes judicial remedies for a breach which are



supposed to be adequate, and to those remedies the party should resort. No order in this case will preclude it.

*Fourth.* Defendant further insists that for the purposes of through business there must be through rates, and that no carrier is under obligation to make through rates except on a consideration of its own interest; joint rates being purely a matter of agreement. On the other hand complainant contends that the same rates the defendant makes with one carrier it must make with others. This contention was advanced, as we understood it, with special reference to the business of the Ohio and Mississippi Railway Company.

In the case before us there is nothing to justify any discussion of rates. No company is before us asking rates of defendant. The Ohio and Mississippi Railway Company is not here as a party, and we cannot know what it desires. We cannot even know that it considers the rates now made by the defendant with other carriers reasonable, or that it would be satisfied to accept them for itself. When that company comes here with a complaint we shall deal with it on the circumstances and equities of the case as they are then made to appear. The only complainant now here is the Kentucky and Indiana Bridge Company. On its complaint that defendant refuses to receive traffic from it as a common carrier, we hold that in our opinion defendant is obliged to receive it, and to afford such equal facilities for the traffic as it affords to other carriers. We also hold as necessarily or at least properly within the issue, that defendant cannot lawfully base a refusal as to any part of the traffic on the ground that it is brought to it in violation of contract. The decision in favor of complainant on the ground of its being a common carrier, necessarily announces a general principle of which other carriers making use of its bridge and tracks may of right avail themselves.

It is undoubtedly true as defendant contends, that through business requires through billing, and is more conveniently done under joint rates. And joint rates are made by consent. On this subject we say in this case only, that in view of the provision in the third section of the act that common



carriers shall not discriminate in their rates and charges between connecting lines, it is not so clear to us as it seems to be to defendant's counsel, that a carrier may make joint rates with one railroad company engaged in a certain traffic and refuse to make such as, under the circumstances, would be equally reasonable with that company's rival. When a question of that sort comes before us, we shall endeavor to decide it as the law and the circumstances of the particular case may be found to require. But we shall assume, with the general right decided as above, that the parties will dispose of other questions without further invoking our aid.

The question of the validity of the contract between complainant and the Ohio and Mississippi Railway Company, or of any of its provisions, is not involved in this case, and no opinion is expressed upon it. The case is disposed of as it would be if no such contract were in existence.

Order will be entered sustaining the complaint and directing the defendant to cease and desist from refusing to receive the interstate traffic offered to it by complainant at the point of connection of the roads of the parties respectively, at Seventh street and Magnolia avenue in the city of Louisville, and instead thereof to afford all reasonable proper and equal facilities for the interchange of interstate traffic between the respective lines of the parties, and for the receiving, forwarding and delivering of property to and from the respective lines and those connected therewith.

Commissioner Schoonmaker files a separate opinion.

Commissioner Bragg, for personal reasons, did not participate in the decision of this case.

THE KENTUCKY AND INDIANA BRIDGE COMPANY  
v. THE LOUISVILLE AND NASHVILLE RAIL-  
ROAD COMPANY.

DISSENTING REPORT AND OPINION.

SCHOONMAKER, *Commissioner*:

The petitioner, after setting forth its incorporation, the construction of its bridge across the Ohio river between Louisville, Kentucky, and New Albany, Indiana, its track connections with railroad lines on both sides of the river, the business in which it is engaged, and other incidental matters, alleges as the ground of complaint that, in violation of law and of the Act to regulate commerce, the defendant, in combination and conspiracy with the Louisville Bridge Company, a corporation owning the only other bridge across said Ohio river between Louisville and New Albany, and with other railroad companies interested in said last-named bridge, and for the purpose of preventing the transfer of freight over petitioner's bridge, and compelling railway transportation of freight across the Ohio river at Louisville to be made over the bridge of the Louisville Bridge Company, has refused and now refuses to further interchange traffic between the railways of said petitioner and said defendant, or to receive from petitioner or the railway companies using petitioner's tracks at said point of connection, cars or freight tendered to defendant for transportation over its railway to points thereon and beyond and *via* said railroad, or to deliver to the petitioner or any railroad company using its said tracks, freight arriving at defendant's said railway at Louisville for or consigned to points on petitioner's railway or any railroad connecting therewith at New Albany, although the defendant affords such facilities for interchange of traffic to said Louisville Bridge Company; and the petitioner prays that the Louisville and Nashville Railroad Company be required by order of the Commission to interchange traffic with petitioner, and with the railway companies using petitioner's railroad at the point of connection made by the petitioner

with the defendant, at Seventh street and Magnolia avenue, in Louisville, and to receive from petitioner and the railway companies using its railroad, all freight tendered by it or them to the defendant for transportation to points on or beyond or *via* its railroad or railroads, and to deliver to the petitioner and to the railway companies using petitioner's railroad at said point of connection, all freight arriving at Louisville over defendant's railroad, and consigned to petitioner or to said railway companies using petitioner's railroad, or to points on the line of petitioner's railroad, or the railroads of the railway companies using its tracks.

The answer of the defendant denies that it is within either the corporate or physical power of the petitioner or the defendant to exchange cars or freight or other traffic between said railways at the point of connection at Seventh street and Magnolia avenue, for the reason that there are no depots, platforms, buildings or other suitable facilities at that point, and because there are no clerks, agents, car inspectors, repairers or other employees at that point to attend to the business of such interchanges; and denies that it would be reasonable or proper to require the defendant to interchange at that point, because the defendant has ample facilities at its four other yards established in the city of Louisville, to handle all of the freight traffic at that point, and it would be improper and unreasonable to require the defendant to go to further expense in the way of employees or terminal facilities to handle the business which the petitioner desires the defendant to handle at that particular point; and defendant therefore claims that it is justified in refusing to interchange traffic with the petitioner, or the carriers that use the bridge of the petitioner, at the point of connection at Seventh street and Magnolia avenue, and denies that either in the interchange of traffic which crosses the bridge of the Louisville Bridge Company, or in refusing to interchange the traffic which crosses the petitioner's bridge, the defendant has been acting or is acting in violation of law, or in combination and conspiracy with the Louisville Bridge Company, or with any other railroad companies interested in that bridge.

## FACTS FOUND.

The petitioner, The Kentucky and Indiana Bridge Company, was incorporated by an act of the Legislature of the State of Kentucky, approved April 1, 1880. By this act the company was empowered to locate, build, construct and maintain, under the laws of the United States, a bridge for railway, wagon, street railway and all other purposes, between the cities of Louisville, Kentucky, and New Albany, in the State of Indiana, from any convenient and accessible point in Louisville, or within one mile thereof, to any point in New Albany, or within one mile thereof, and the company was clothed with all the powers, privileges, rights and franchises necessary for carrying out the purposes named in the act, together with the power to purchase, lease or condemn all the real estate that might be necessary for the purposes of the corporation, whether for piers, approaches, tracks, toll-houses, or approaches leading to the same. The corporation is also given power to lay upon the said bridge a single or double track for railroad cars, or street cars, or for wagons or other vehicles, and all animals, and to erect footways for passengers, and charge for the use thereof reasonable tolls, and for the said purpose to erect on either or both sides of said bridge toll-gates, and to do all other acts or things necessary for collecting the charges for the use of the bridge; and also to run any line of railways through the city of Louisville, on such terms as might be prescribed by ordinance of the city of Louisville, or along any street or alley, to connect with any railway bridge, transfer company or depot, and was given the right to operate or lease said connecting line or lines, and to charge a reasonable compensation for the use of the same. It is also empowered to "contract with any railroad company for the use of said bridge by its cars or engines, or for other purposes." Any railroad company, street railway or person or municipal corporation, in or out of the city of Louisville, is authorized to subscribe for its capital stock upon any terms or conditions agreed upon; and it is empowered to "make such contracts or agreements as may be deemed expedient for the use, management or control of such bridge." A like company was

organized under the general laws of the State of Indiana, and, pursuant to statutory provisions, the two companies were duly consolidated at a subsequent period.

By an act of the Kentucky Legislature, approved March 13, 1884, the bridge company was authorized to contract with, or to construct, any railway or terminal line, either in Kentucky or in the State of Indiana, which may be necessary for completing its terminal facilities, and to extend such branch lines through the city of New Albany, in Indiana; and by a later act, it was also authorized to construct such line or lines in the county of Jefferson, State of Kentucky, as might be necessary to complete the connection with other railways or depots. By another act, approved May 3, 1884, the bridge company was further authorized to connect its line with the line of the Short Route Transfer Company, and for that purpose to cross other railway or bridge lines, passing either under or over the same, and to cross the land of other railway or bridge companies, in case it might be necessary in running its connecting lines.

Under these powers the company constructed its bridge, and the construction was completed in 1886. The bridge forms a connection for railway transportation and for the passage of carriages between the cities of Louisville, Kentucky, and New Albany, Indiana. The company, under its powers, has constructed about ten miles of railroad tracks in the city of Louisville, and it has two modes of connection in Louisville with the defendant; one at the Louisville depot, over what is known as the Short Route railway, and another by a line running around the town about six miles to connect with the Southwestern road and the Louisville and Nashville railroad. The only track connection of the petitioner with the defendant's road is at Seventh street and Magnolia avenue, and that is in part over the private switching tracks of a Louisville shipper which the petitioner has acquired the right to use.

By the statutes of Indiana the bridge company was authorized to construct a railway, with one or more tracks, from said bridge, and the embankments appertaining thereto, and to connect the same with other railway tracks, and to

fix the rates of toll for all persons and property passing over said bridge and railway tracks connected therewith, whether on foot or horseback or in vehicles of any kind, or in cars propelled by steam or any other power; also to connect the line of railway over said bridge by continuous line of railway, in such manner and upon such route and terms as may be deemed most expedient, with any other line of railway whatever, and to maintain, use, operate and control the said connection, when completed, and charge and receive tolls for the use thereof.

On the 29th day of September, 1886, an agreement under seal was entered into between the petitioner, The Kentucky and Indiana Bridge Company, and the Ohio and Mississippi Railway Company, a corporation organized under the laws of Ohio, Indiana, and Illinois, by which, among other things, it was agreed as follows:

*First.* The bridge company agrees to allow the railway company to run its locomotives, cars and trains over the Kentucky and Indiana bridge and approaches from a convenient point of connection in Vincennes street, New Albany, to the ground of the railway company at Fourteenth street, in Louisville, or, should the railway company elect so to do, to a connection with the track of the Short Route Railway Transfer Company, near Thirteenth street, in Louisville, the railway company's locomotives, cars, and trains to have preference over those of a similar class of other railroad companies that may use the bridge, so far as such preference can be legally granted by the bridge company.

*Third.* The bridge company agrees to allow the railway company without charge, to lay, maintain and use such transfer tracks as it may require on the ground of the bridge company between Bank and Main streets on the connecting line of the bridge company, the amount of ground so occupied not to exceed seven acres and to be of suitable and convenient shape.

*Fourth.* The bridge company agrees to establish, provide

and maintain tracks connecting its present tracks with the tracks of all other railroads now entering New Albany within a reasonable time either directly or through the use of other railway lines, and to switch the cars of the railway company over such connecting tracks at a switching charge of \$1.00 per car; and also to transfer cars from the railway company's transfer yard south of Bank street, in Louisville, to the Louisville and Nashville railroad, or the Chesapeake, Ohio and Southwestern railroad at the same rate per car.

*Sixth.* The tolls shall be fixed at the same rate from time to time as the rate of the Louisville Bridge Company, and these tolls shall be paid monthly by the railway company to the bridge company, it being provided, however, that whenever the sum so collected shall exceed the sum of \$17,500 per quarter any excess over such amount shall be paid back to the railway company, but the railway company agrees to pay to the bridge company \$17,500 per quarter whether or not the amount of tolls so collected equals that sum; the intention being to give a fixed annual rental to the bridge company of \$70,000 per annum.

*Seventh.* The railway company shall endeavor with reasonable dispatch to clear itself of future liability for tolls, rentals, charges or otherwise under its present contract for the use of the Louisville bridge, and until such liability shall be removed the railway company shall not be compelled to pay any tolls hereunder to the bridge company.

And said Kentucky and Indiana Bridge Company may, at its own cost and in the name of said Ohio and Mississippi Railway Company, defend against any claim of liability on the part of said Ohio and Mississippi Railway Company under said contract.

*Eighth.* The railway company agrees during the existence of this agreement to carry and transport over the said bridge, approaches, and railway tracks, all of its locomotives, cars, freight, passengers, mails, express matter, and everything else carried or transported by it on its own line of railroad afore-



said which it may carry or transport destined or consigned to or from Louisville and to or from points which require their passage over the Ohio river at or near Louisville. *Provided, however,* That said railway company is at liberty, if it so desires, to perform its passenger service over any other bridge, but the rental to be paid hereunder shall not be decreased by reason thereof. The interchange of freight business at Louisville and New Albany between said railway company and any connecting road shall be done over the tracks of the bridge company between the south approach to its bridge and the tracks of such connecting road, so far as the Ohio and Mississippi Railway Company can lawfully control the same, and the charge for the use of such tracks shall not exceed that on any other line.

*Ninth.* The railway company agrees, so far as it lawfully may, not to carry or transport over the said bridge and the approaches and tracks thereto any locomotives, cars, freight, passengers, mail and express matter between Louisville and New Albany that originates in or comes from any railroad or water line entering the one place and destined for the other, it being mutually understood and agreed between the parties hereto that the bridge company shall have the sole and exclusive right to control, carry, and transport over the bridge and the approaches and tracks thereto all traffic not received from or destined to points reached over the railroad of the railway company north and east of New Albany.

*Tenth.* The railway company agrees to furnish at its own cost all motive power necessary for the transfer of its locomotives, cars, freight, passengers, mail and express matter transported by it over the said bridge and the approaches and tracks thereto.

There are four railroads which enter Louisville from the north side of the Ohio river, the Jeffersonville, Madison, and Indianapolis railroad; the Ohio and Mississippi railroad; the Louisville, Evansville and St. Louis railroad; and the Chesapeake, Ohio and Southwestern railroad. Until a re-

cent date all these railroads used the Louisville bridge to reach the city of Louisville with their cars. Recently the Ohio and Mississippi railway has used the bridge of the petitioner under the contract before mentioned. The only independent connection over the tracks of the bridge company with the road of the defendant is by a somewhat circuitous route of about six miles to the junction of tracks formed at Seventh street and Magnolia avenue. It was claimed by the petitioner, and testimony was given to show, that it was not practicable for it to make a connection with the defendant at any other point.

Interchanges of business between the defendant and the petitioner or the Ohio and Mississippi railroad using the bridge and tracks of the petitioner to some extent and for a limited time have taken place at Seventh street and Magnolia avenue, but no agreement for interchange of business at that point has ever been made.

Some discussion upon the subject ensued between the petitioner and the defendant, the result of which was that the defendant refused further interchanges at that point, and insisted on its right to refuse until the time of the hearing. On the hearing it announced itself willing to interchange at Louisville rates and to that extent waived its objections.

The Louisville and Nashville Railroad Company was incorporated by the Legislature of Kentucky in 1850, and was given power to construct a railroad from Louisville to the Tennessee line in the direction of Nashville. Its line has since been extended by consolidations, leases, purchases, and traffic arrangements, to several points in the south, including Nashville, Mobile, and New Orleans. The charter provides that it shall not be lawful for any other company or any other person or persons to travel upon or use any of the roads of said company, or to transfer persons or property thereon, without the license and permission of the president and directors thereof; but the power was reserved to the State of Kentucky to incorporate thereafter other railroad companies, and it was provided that any and all of such railroad or railroads hereafter constructed may connect and join with the road hereby contemplated. By an amendment to

the charter, made in 1860, the company was authorized to make arrangements with other companies for through freights and passage from distant points, on such terms as they may agree from time to time.

The Louisville and Nashville Railroad Company has four freight yards in and near Louisville. The first, known as the First and Water street yard, begins at First and Water streets in said city, and extends, with various sidings as far east as Preston street in said city, a distance of about 2,000 feet. The second yard, known as the East Louisville yard, begins at what would be Main street extended in Louisville, and runs southwardly and westwardly to a point near Baxter avenue, a distance of from 2,000 to 3,000 feet. This yard is between one and a half miles distant from the first yard. These two yards are used principally for handling freights coming from or going to points on the Cincinnati division of the defendant's road and points beyond that division. The third yard, known as the South Louisville yard, is at the junction of the Louisville Railway Transfer Company tracks with the main line of the defendant, and is 2,000 or 3,000 feet long; this yard is distant from the second yard about four or five miles. At this point all cars intended for the Cincinnati and Lexington division are taken out of defendant's trains, and those for Louisville proper and to go north of the Ohio river are taken to the fourth yard. The fourth yard, known as the Ninth and Broadway yard, extends from Broadway south to Oldham street, and from Ninth to Tenth streets. It is about three miles distant from the South Louisville yard. The main or principal yard is located at Ninth street and Broadway, where the traffic crossing the Ohio river at Louisville is interchanged with the various railroads leading north from Louisville, and where local freight received from the south destined to Louisville, or received at Louisville destined to points south, is handled. At the first, second, and fourth yards above mentioned, the defendant has depot buildings, platforms, and other adequate facilities, and clerks, inspectors, repairers, etc., for receiving, delivering, transferring, and handling cars and freights. At the third, or South Louisville yard, it has a passenger plat-

form, but no facilities for handling freights except to switch them in car-load lots. The defendant has switch engines, which, under certain regulations, run between the third and fourth yards above mentioned, passing by the point of connection with the petitioner's railway at Seventh street and Magnolia avenue. The connection between the petitioner's railway and the defendant's railway at Seventh street and Magnolia avenue, has been constructed so that cars can be switched from one railway to the other, and the connection affords a practicable means of interchanging freight cars and freight business between the petitioner and the defendant, or between the defendant and the railway companies using the bridge and railway of the petitioner. But interchanges of freight at that junction can only be conveniently made in car-loads. Freight in broken lots or less than car loads requires to be hauled about a mile to the Tenth street depot to be inspected for interchange.

Neither the petitioner nor the defendant has any buildings, platforms, or other structures for the interchange of traffic at the point where the petitioner's connection with the defendant has been made.

The petitioner does some business as a carrier between Louisville and New Albany, and it bills through freight from sidings on its line to go to any point on any other connecting line. There are five sidings of the petitioner in Louisville. The cars supplied by the petitioner to shippers are obtained by ordering them from other companies for whose lines the freight is destined. That is the only way cars are furnished for freight destined beyond Louisville or New Albany. The petitioner has five engines and ten passenger cars, but no freight cars. The petitioner pays the freight charges to the lines from which cars are ordered. Its own charges are for the bridge tolls and its terminal service. The bridge toll varies, according to the classification of the freight, from one and one-quarter to six cents per hundred. The switching charge in Louisville for moving freight from the Ohio and Mississippi road on the tracks of the petitioner to the defendant's road varies from one to three dollars per

car. The petitioner makes no charge on freight that crosses its bridge except the bridge toll and the switching charge.

The Louisville Bridge Company was incorporated by the State of Kentucky March 10, 1856. By an amendment to the charter made in 1862 the bridge company was authorized to contract with any railroad company incorporated under the laws of the State of Kentucky or any other State of the United States to warrant the annual profits of the bridge to be built by said company to be equal to the keeping the bridge in repair, and of its operation, and that the net earnings should be equal to 6 per cent. on a cost of one million dollars. It was further authorized to contract at any agreed sum or rate with any railroad company chartered by the State of Kentucky or any other State of the United States, for the annual use of said bridge by the cars, or for the purpose of said railroad company; and any railroad company incorporated by the State of Kentucky was authorized to subscribe to the stock or make the guarantees and agreements authorized by the preceding sections of the act, when authorized by the stockholders at some general meeting.

The bridge was declared to be a lawful structure by an act of Congress, approved July 14th, 1862. By an act of Congress, approved February 17th, 1865, the act of July 14th, 1862, was so amended as to authorize the Louisville and Nashville Railroad Company, and the Jeffersonville Railroad Company (stockholders in the Louisville Bridge Company), to construct a railroad bridge over the Ohio river at the head of the Falls of the Ohio, subject to all the provisions of said act, and the bridge so to be constructed was declared to be a lawful structure.

Under these acts of legislation the capital stock of the Louisville Bridge Company was subscribed for by the Jeffersonville, Madison and Indianapolis Railroad Company, the Louisville and Nashville Railroad Company, and certain other corporations and individuals, the subscription of the Louisville and Nashville Railroad Company being \$300,000.

On June 5th, 1872, a written contract was entered into between the Louisville Bridge Company, of the first part, the Jeffersonville, Madison and Indianapolis Railroad Company,

of the second part, the Ohio and Mississippi Railway Company, of the third part, and the Louisville and Nashville Railroad Company, of the fourth part, in which it was recited that the capital stock of the bridge company was fifteen hundred thousand dollars, that its mortgage debt was eight hundred thousand dollars, evidenced by bonds to mature December 1st, 1888, bearing interest at seven per cent., payable semi-annually. The contract so entered into provided among other things, that the second, third, and fourth parties agree to use the bridge as covenanted in the contract. It was covenanted that the tolls and charges over and for the use of said bridge and its tracks, owned by the first party, in the transportation of freight, passengers, mails, and other goods received from or delivered to the roads of said second, third, and fourth parties, per ton and per passenger, or per car, engine, or other means of transfer over said bridge, shall be fixed on signing this agreement, and shall not be in excess of a toll or charge sufficient to produce, in the aggregate a sum equal to the cost and expense of keeping in repair and taking care of said bridge, paying a dividend semi-annually of 6 per cent. on the capital stock of fifteen hundred thousand dollars, the interest upon the bonds as the same shall become payable, a sinking fund sufficient to pay off the bonds of eight hundred thousand dollars at maturity, the amount necessary to keep up the corporate organization of the first party, with its proper officers and servants, and such taxes as may be chargeable against the bridge company on said bridge or other property appertaining thereto or otherwise. And it was further provided that the charges and tolls shall, from year to year, be reduced in proportion to the reduction of interest on the bonds, by the operation of said sinking fund, and the tolls and charges should always be the same to each of the second, third, and fourth parties; that the tolls and charges to other railroads or railroad companies, for like use of the bridge and the approach owned by the first party, shall not be less than those charged to or incurred by the parties to the contract; that all such tolls and charges paid by other railroads or railroad companies, shall be applied to and form a part of the fund provided for the payment of

expenses, sinking fund, interest, dividends, and taxes, the same as if paid by the second, third, and fourth parties to the contract.

Each of the railroad companies parties to the contract agreed that it will pass over the said bridge all the freight, passengers, mails, express matter, and other goods carried on or over their roads to and from Louisville, and to and from points which require their passage over the Ohio river at or near Louisville, during the existence of the agreement.

The fourth party, the Louisville and Nashville Railroad Company, covenanted with each of the other parties to deliver to the party of the first part, the Louisville Bridge Company, to be passed over said bridge, or the parties of the second or third parts, or to such other railroad company or companies as may, for the time being, be transporting freight, passengers, mails, express matter, and other goods over the bridge, all the freight, passengers, mails, express matter, and other goods carried on or over its roads, or any part thereof, destined for Jeffersonville, in the State of Indiana, or any other points which require their passage over the Ohio river at or near Louisville, during the existence of the agreement, and will charge on said traffic, in addition to its rates for transportation service, the then established rates of tolls and charges provided for the use of said bridge and approaches, and punctually pay the said tolls and charge to the first party.

The approach to said bridge at the north end thereof was owned by the second party, the Jeffersonville, Madison and Indianapolis Railroad Company, and the third party, the Ohio and Mississippi Railroad Company, agreed with the second party to use said approach to said bridge in going into and over said bridge, and it was agreed between said second and third parties that all the trains, cars, and engines passing over said approach, and over said bridge, shall be under the control and direction of the second party, and that whatever rules are prescribed for the government of the trains, cars, and engines, of the second party, in the premises, shall be equally applicable to the trains, cars, and engines of the third party, each being dealt with alike. And



the second party covenanted to furnish all needful and sufficient engines for the service so provided for, and at all times to transfer with the same promptness and care over said bridge the trains, cars, engines, and traffic of the parties of the third and fourth parts that it does the trains, cars, engines, and traffic received from or to be delivered to its own road, the intention being that each of the parties shall enjoy equal facilities over said approach and bridge.

A reasonable compensation is provided for, to be paid to the said party of the second part, for the service so to be rendered, and to be apportioned between the parties to the contract in proportion to the service to each, per ton, and per passenger, or per car, engine, or other means of transportation.

It is further provided that the contract shall continue in force and operation until it shall be terminated by some one of the parties thereto, giving notice in writing, to the other parties, of its intention to terminate the same at the expiration of two years from the giving of such notice; at the expiration of which two years the same shall terminate as to all the parties thereto included in such notice.

It was shown by the testimony that the rates of tolls and charges upon said bridge have decreased per ton and per passenger, as the volume of the traffic over the bridge has increased. Since the contract was entered into the Louisville, New Albany and Chicago Railroad Company, and the Louisville, Evansville and St. Louis Railroad Company, have been allowed to use said bridge and its approaches in substantial accordance with the provisions of the contract. It was also shown by the testimony that some years ago an arrangement was made whereby the dividends agreed to be paid upon the capital stock of the bridge company, were reduced from 6 to 4 per cent. semi-annually, and that the sinking fund provided for by the contract is now sufficient to pay off the bonds, and that they will be paid when they mature, in December, 1888.

The indebtedness of the Kentucky and Indiana Bridge Company, the petitioner, is one million dollars, represented by 5 per cent. bonds, on the bridge, and four hundred thou-

sand dollars upon the belt road, represented by 5 per cent. bonds. The capital stock of the petitioner is one million seven hundred thousand dollars. The petitioner bought the required embankment and right of way leading from New Albany in the direction of Water street and gave it to the Ohio and Mississippi Railroad Company as an inducement for that company to build to the bridge of the petitioner. On the 4th of February, 1888, the superintendent of the Ohio and Mississippi Railroad Company gave notice to the Louisville Bridge Company that at twelve o'clock noon of that day that railroad company would cease to use the bridge of the Louisville Bridge Company, and that the engines of the bridge company must not go into the yard of the Ohio and Mississippi Railroad Company.

In November, 1887, the charge for switching by the Louisville Bridge Company was discontinued, and a circular was issued that until further notice no charge will be made for switching to or from its bridge loaded cars passing over said bridge and paying established tolls, but that the usual charge will be made for switching loaded cars that do not pass over the bridge.

Neither the Louisville Bridge Company nor the Kentucky and Indiana Bridge Company is a member of any of the associations that fix rates from points north of the Ohio river and Louisville to points south of Louisville. The Louisville Railroad Company does not own or operate any line of railroad north of the Ohio river. Through rates from points north of the Ohio river to points south of the Ohio river are made by agreement of the roads north of the river and those south of the river upon terms and conditions assented to by the companies making such rates, and through bills of lading are issued pursuant to such agreements. There are many points north of the Ohio river, and there are many points south of the Ohio river, to which through bills of lading are not issued, and through rates not made.

The defendant company has arrangements with the four roads entering Louisville from the north side of the Ohio river by the Louisville bridge for interchanging freight traffic, upon terms and conditions agreed upon between them,

and the defendant refuses to receive freights from those roads excepting upon the terms and conditions agreed upon. If those roads bring freight to Louisville in violation of the agreements, the defendant company refuses to receive and transport such freight, except as a local Louisville shipper, and the freight so received is treated the same as freight tendered for shipment by Louisville shippers.

The defendant company has no arrangements for interchange of traffic with the Kentucky and Indiana Bridge Company, and therefore refused, at the time this proceeding was commenced, to receive freight from that company, unless delivered to the defendant at its various freight stations, where it offered to receive the freight, issue bills of lading, and contract for its transportation upon the same terms and conditions it received like kinds of freight from the Louisville shippers; and its agents were instructed to only receive freight and deliver property to the Kentucky and Indiana Bridge Company at its regular freight stations in Louisville on the same terms and conditions that the Louisville shippers receive and deliver freight. This position was withdrawn on the hearing and the defendant admitted that so far as any additional expense and trouble were concerned the junction at Seventh street and Magnolia avenue might be regarded as a suitable place for receiving and delivering freight cars.

#### OPINION AND CONCLUSIONS.

The petitioner in this proceeding raises several important and far-reaching questions. It claims to be a common carrier within the meaning of the Act to regulate commerce, engaged in the transportation of passengers and property from one State to another by means of a line of railroad. It also claims as such common carrier to be entitled to the same facilities for the interchange of traffic with the defendant at a point selected by itself that the defendant affords to other lines at its regular yards and depots, and further demands like interchanges of traffic with the defendant for other lines of railroad that make use of the petitioner's bridge. The results aimed at are, therefore, that through routes and through

rates shall be established by the defendant over the bridge of the petitioner, and that any contract obligations the defendant may have previously entered into or other considerations, public or private, must yield to the mandate of the statute, as interpreted by the petitioner.

The claim is, in effect, that carriers in serving the public shall be compelled to use the petitioner's bridge as part of their transportation lines, and that the statute affords sufficient warrant for this demand.

If the claim of the petitioner can be sustained any other bridge used for the passage of railroad trains may insist on similar rights, and any fraction of a road may ally itself of right to the railroad system of the country on equal terms. Upon this hypothesis the unification of the railways of the country has become an accomplished fact, and through routes and through joint rates must follow wherever they may be demanded. This sweeping interpretation does not seem to be the fair and legitimate construction of the Act to regulate commerce.

The power to regulate commerce was conferred upon the General Government for public purposes, and its exercise must be assumed to be in consonance with those purposes. The most important of these purposes are that commerce among the States shall be free, and not hindered or obstructed in its movements, nor burdened by exactions imposed by any other authority than Congress. But Congress does not create the carriers of commerce, nor sustain any relations to them except as they engage in that business. Individuals and corporations may engage in interstate commerce and their business thus become subject to such regulation as Congress may prescribe. These regulations very properly include reasonable charges, and the prohibition of all unjust discriminations and undue preferences, to the end that equality may be maintained among the citizens of the country in the conduct of their business. But the law does not require any one to engage in commerce, nor make it obligatory to foster any particular instrumentality of commercial intercourse, whether a bridge or a railroad. The freedom of citizens and corporate organizations of citizens to

select such instrumentalities as they may prefer for transportation uses is unimpaired. And apart from the enactments to secure justice and equality in transportation the numerous matters that precede and attend the business of engaging in commerce among the States, including the creation of the carriers, their corporate powers, the character of their cars, the precautions for safety, their depots for receiving and discharging traffic, and their business arrangements for continuous shipments of traffic, are left to the jurisdictions under which they have their origin.

The cautious legislation of Congress applies to the movements of commerce by the agencies described in the law, when the movement is not wholly within a State. The public concern is in the freedom and expedition of the movement and the reasonableness and equality of cost, and not in any particular agency over which the movement takes place. The act takes cognizance of carriers in their relations to the interstate business they engage in, and its great purpose is that the business shall be conducted justly and impartially, and that reasonable accommodations may at all times be afforded to the public. As was said, in substance, by the Supreme Court in the Express cases: The public interest is in the transportation, and not in the agencies by which it is secured, provided they are such as to insure reasonable promptitude and safety. (117 U.S. 24; 2 Morawetz on Car., sec. 1118.)

The duties of interstate carriers toward each other relate to the important public purposes the law has in view. The questions presented are properly considered, therefore, on the theory that the public interests are of primary concern, and that the private interests of carriers, or auxiliary agencies, are only important in the sense that the public may be reasonably and adequately served. The petitioner should show that the complaint involves more than a mere contention about a mode of establishing a through route or rate, and that the public interests are in some manner affected by, or concerned in the controversy.

Railroad carriers are, with few exceptions, creatures of State laws defining their powers and duties, and in the ab-

sence of other authority, their sphere is within the State by which they are created. By congressional legislation many years ago State roads were authorized to connect with the roads of other States, and form continuous lines of transportation at through rates. The creation of such lines, and the basis on which they might be formed in respect to rates and interchanges of traffic, were left to the discretion of connecting roads. They might enter into arrangements with other lines or roads, and with such roads as they might deem expedient, or they were at liberty to decline. The continuous shipment and through rate were voluntary and not compulsory. A State road, however, when it engages in commerce among the States enters a field over which the General Government has jurisdiction, and must conform to the lawfully prescribed regulations for conducting that business. The Act to regulate commerce applies to common carriers engaged in the transportation of passengers or property by railroad, or by railroad and water when under a common control, management or arrangement, for a continuous carriage or shipment from one State or Territory to another, and such carriers are required according to their respective powers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines to those connecting therewith, and are forbidden to discriminate in their rates and charges between such connecting lines.

The statute assumes the existence of connecting lines and of arrangements for continuous carriage or shipment, and directs its enactments to business of that character.

By act of Congress of June 15, 1866, incorporated in section 5258 of the United States Revised Statutes, it is enacted that "every railroad company in the United States whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its road, boats, bridges and ferries, all passengers, troops, Government supplies, mails, freight and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous

lines for the transportation of the same to the place of destination." It was further enacted that this section shall not "be construed to authorize any railroad company to build any new road, or any connection with another road, without authority from the State in which such railroad or connection shall be proposed." The effect of this statute is to enable business connections between railroads of different States for interstate transportation, to be lawfully made, subject to the condition, however, that such connections should be formed by authority from the State in which they might be proposed to be made.

The statute referred to authorizes railroads of one State "to connect with roads of other States so as to form continuous lines for transportation" purposes. The Act to regulate commerce, as its title indicates, applies to the business of such lines when formed. It prescribes what was not contained in the former act, the rules and principles by which the business is to be governed and the public served. So much of these as apply to this case have been cited.

By these provisions a suitable junction of lines, for "the interchange of traffic between their respective lines," for which interchange all reasonable, proper and equal facilities must be afforded, is implied, for it is enacted that "this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." And the facilities required to be afforded must be reasonable and proper, not unreasonable or improper. The act, therefore, specifies certain limitations within which interchanges between different lines may of right be demanded.

The theory of the petitioner seems to be that the right to interchange traffic, and thus establish a continuous line, is unconditional, and that one carrier may approach with its tracks the road of another carrier, and if the facilities for interchanging, in the form of depots, yards, sidings, and employees, do not exist at the point of contact, they must be provided.

The defendant understands its obligation under the statute to be more limited, and these differences present the points of contention between the parties.



The first question that arises upon the merits of the case is whether the petitioner, The Kentucky and Indiana Bridge Company, is a common carrier to which the provisions of the act are made applicable. A bridge company is not *per se* a common carrier. It no more suggests the duties or functions of a common carrier than a turnpike company. The usual powers of a carrier may undoubtedly be granted to a bridge company, or, in the absence of constitutional restrictions, to a banking association, but they have not yet been conferred upon the petitioner in this case.

It has been decided that the owner of a toll-bridge is not a common carrier. *Grigsby v. Chappell*, 5 Rich., 443. Mere forwarders of goods, though combining the character of warehousemen, are not common carriers. Persons so employed, if they have no concern in the vehicle by which the goods are sent, and have no interest in the freight, are not liable as common carriers, but only for ordinary diligence. *Angell on Car.*, 68, 5 Ed.

Courts have held that a railroad which occasionally carries goods or freight in passenger trains is not a common carrier of goods in such trains. *Elkins v. Boston and Maine R. R.*, 3 Fost., 275. And the same rule has been applied to a railroad which occasionally carries passengers in freight trains. *Murch v. Concord R. R.*, 9 Fost., 9.

An individual may become a common carrier by simply engaging in the business and the rights, duties and liabilities of a common carrier will apply to him by reason of his occupation. But a corporation having an artificial existence created by law has only such rights and powers as are conferred by law, or necessarily incidental to its granted powers. It cannot lawfully engage in any other business than that authorized by law, and if it does so its acts are *ultra vires*. "The public are interested in restraining corporations to the enjoyment of the precise franchise granted and the exercise of the powers expressly conferred, and the incidental powers essential to the express power. Shareholders are also interested in keeping their trustees, the governing boards, within the limits of the delegated power with which they are

clothed." *First Nat. Bank v. Ocean Nat. Bank*, 60 N. Y. R. 294.

The powers of the petitioner conferred by its charter are cited in the statement of facts so far as they relate to the uses and purposes of its bridge and tracks. These powers are appropriate and ample for the legitimate functions of a bridge company, with the necessary approaches and track accommodations for railway connections, an improvement obviously of great importance and utility, but there are no provisions in the charter that indicate an intention to create a common carrier or to regulate its duties as a carrier. Its powers may be fully exercised within the sphere of a bridge company proper, and require apparently unwarranted implications to embrace those of a common carrier. In the articles of association of the bridge company the object and purpose of the company are stated to be to construct, own and operate a bridge from a point in the city of New Albany across the Ohio river to a point in the city of Louisville, for both railway and common roadway purposes, together with a causeway, as an extension of, and connection with, said bridge. It is reasonably clear from the provisions of its charter and its articles of association, that the petitioner was not chartered as a common carrier or railroad company, but to construct and maintain a bridge as a means of transit over the Ohio river, with the approaches thereto, and track connections with the railroads entering Louisville and New Albany, on either side of the river. The charter contains none of the provisions usually incorporated in railroad charters or expressed in general laws defining the duties and powers of a company as a carrier of passengers and property, and regulating its management or business. Consistently with the object of incorporation as a bridge company, with incidental facilities of connections with railways, it has no transportation equipment except five engines used for switching purposes, and ten passenger coaches for local transit over the river, and has leased the use of the bridge to the Ohio and Mississippi Railroad Company, with the right to haul all cars for through shipments over the bridge, and giving that

company a preference for its engines, cars and trains in the use of the bridge.

It publishes no tariffs except the tolls for crossing the bridge, which specify the class rates per hundred pounds under the official classification, and a few special car-load rates upon six heavy commodities.

It would seem that the authorities of Kentucky did not regard the petitioner as in any sense a railroad company or common carrier, as no mention is made of it in the report of the railroad commissioners of that State for the year 1887, and no report from the company appears in that document.

In a limited and local sense the petitioner exercises the functions of a common carrier. It transfers local passengers over the bridge between Louisville and New Albany, and gathers freight at New Albany and in Louisville, and bills it to the railroads entering those cities, but the cars used for such freight are ordered from the companies by which they are transported. The freight is paid for by the ton to the road furnishing the cars, and no transportation charge is made by the petitioner for freight other than the bridge toll and switching charges. All through traffic is hauled over the bridge by the Ohio and Mississippi Railroad Company, the lessee of the bridge, with its own engines and trainmen.

This limited and terminal service does not make it a common carrier operating a line of railroad for interstate transportation in the sense of the Act to regulate commerce. It furnishes an important and very useful facility for such lines in moving traffic, and, under the Act, the bridge is to be deemed a part of the line of any railroad company that operates it in connection with its road. Independently, therefore, as a bridge company it is not such a common carrier as, under the Act, to require an interchange of traffic of a through character with other carriers engaged in such business. The two bridges at Louisville sustain practically the same relation to the carriers that use them for interstate transportation. If, therefore, the petitioner can compel interchanges of traffic with the defendant on the Kentucky side of the river, the Louisville Bridge Company, for the same reasons, can compel interchanges of traffic with the Ohio and Mississippi Railroad

Company on the Indiana side, and any other bridge company similarly situated would have the same right, and carriers would be obliged to form through routes and make through rates not only with lines using such bridges, but with every bridge that might establish track connections for that purpose. This is certainly not required by the present statute. For the reasons that the petitioner, by its charter, is only a bridge and transfer company, with powers limited to that business; that it has no equipment except five engines and ten passenger coaches; that it has in fact no line except its bridge and the approaches thereto connecting it with lines of road; that it does not haul or handle through traffic over the bridge; that it does not issue, file and publish any tariffs, except for the bridge tolls, and pays like other shippers for freight collected and shipped by it in the cars of other roads ordered and furnished for the purpose; that it has no concern in the vehicles by which the goods are transported and no interest in the freight charges, it is not a common carrier within the purview of the Act to regulate commerce, but at most only a *quasi* carrier, and therefore cannot maintain this proceeding on that ground.

But although not in the proper sense a common carrier the petitioner engages in certain traffic operations which require the co-operation of other roads to render them useful to the public and valuable to the petitioner. Its relation to traffic consists in the collection of freight at Louisville and New Albany all bearing Louisville rates and which when intended for points on defendant's road, is loaded in cars ordered from the defendant. The defendant has at all times been willing to receive and deliver this traffic at its regular yards and depots in Louisville, but until the time of the hearing was unwilling and refused to interchange the traffic at Seventh street and Magnolia avenue for the reason that that point was not strictly a freight yard or depot.

On the hearing, however, and subsequently in a brief filed, the defendant, by its counsel, conceded that Seventh street and Magnolia avenue may be regarded as a proper point for the interchange of traffic between the parties so far as the trouble and expense of the interchange is concerned, and that

as to traffic to or from points on the terminal railway of petitioner in Louisville, which pays Louisville local rates, and is not destined to cross the river at Louisville, the petitioner is a carrier *de facto* though not *de jure*; and that if the Commission should be of opinion that the statute gives the right of interchange to one who is only a carrier *de facto*, then that the petitioner may be entitled to demand an interchange of that kind of traffic at the point mentioned. It was insisted, however, that the petitioner is not, by its charter, a common carrier, and that a corporation cannot lawfully demand an interchange of freight unless it can show that it is of right, as well as in fact, a common carrier. That, therefore, the right to demand an interchange of that kind of traffic belongs to the shippers or consignees at Louisville, and not to the petitioner.

This summarizes the position of the defendant. It says substantially: "We will exchange with the petitioner all freight tendered to us or to be received from us at the track connection at Seventh street and Magnolia avenue bearing local Louisville rates in the same manner and on the same terms as at our regular yards and depots, waiving the objections that the point of exchange is not at a depot and the petitioner not a common carrier, and we do so because the public will be accommodated, and the additional expense and trouble of the interchange at that point are too unimportant to contend about, and because the question of rates is not involved. But as to through freight crossing the river in either direction coming from or destined to other lines, that presents a different question, for it involves joint through rates and our contract obligations with the Louisville bridge in which we have an interest, and with other lines parties to that contract, upon which question we have a right to be consulted."

The contention of the defendant seems neither unreasonable nor unlawful. Its waiver of its legal right to receive and deliver freight at its depot and its consent to the interchange at the track connection, notwithstanding the opposite position taken in its answer, are reasonable and proper to be done. The interchange at that point is feasible by reason

of side tracks and switching facilities, and it is in the public interest. This compliance with the petitioner's demand satisfies so much of the complaint as the petitioner can lawfully press assuming it to be a *de facto* carrier or a forwarder or shipper.

The petitioner also asks that the defendant may be compelled to interchange through traffic passing over its bridge from and to the Ohio and Mississippi railroad. This is, in substance a demand that the defendant shall make a through route with the Ohio and Mississippi Railroad Company over the petitioner's bridge. This the petitioner has no right to demand. It has lawful right to secure business for its bridge, to make contracts with railroads and others for its use, but it has no authority to compel a carrier to make its bridge a part of its line of road and to enter into a business connection with another carrier in order that the traffic may pass over its bridge. The petitioner has no interest as a carrier in the transportation itself. It does not haul this traffic, but it is hauled by the Ohio and Mississippi Company. It is not a party to any through rates. Its interest is in the tolls or compensation for the use of its bridge and the switching charges over its terminal connections with railroad lines. Complaint for refusing to make a through route or through rates with the Ohio and Mississippi railroad should come directly from that company. There is no evidence in this proceeding, other than the allegations of the petitioner, that the Ohio and Mississippi Railroad Company desires such interchanges of traffic and through rates, although it was so argued by counsel. The fact that the defendant's refusal rests solely on the use of the petitioner's bridge does not authorize the petitioner to litigate the question. That controversy, if any, is with the Ohio and Mississippi Railroad Company, and that company is the party to institute a complaint and prosecute it. No order can be made for or against a carrier unless it is a party to the record.

But if the petitioner could legitimately institute a proceeding for the benefit of the Ohio and Mississippi Railroad Company it could not maintain this proceeding on the facts presented. The question is not whether an interchange of

business between the Ohio and Mississippi Railroad Company and the defendant, under arrangements for continuous shipments, whether on joint through rates or otherwise, shall take place at all. The defendant insists it has not refused, but the contention is: How this shall be done.

The interchange of traffic at through rates between the Ohio and Mississippi railroad and the defendant has been carried on for many years over the Louisville bridge, under a contract to which both of these companies and others were parties, and which is still in force, and the exchanges of freight and passengers were made at the regular depots and yards of the defendant in the city of Louisville. The question presented is whether the Ohio and Mississippi Railroad Company, through the petitioner, can compel the defendant to make such interchanges over the petitioner's bridge, and at a point where the defendant has no depot or employees stationed and at some distance from its regular yards and depots. Unless the statute is imperative that one carrier may connect its tracks and require a business connection with another carrier at any point it may select, this cannot be done. A railroad company has the right to establish depots for receiving and delivering freight and passengers. It is not bound to receive or deliver them elsewhere unless expressly required to do so by statute. *A., T. & S. Railroad v. D., N. & O. Railroad*, 110 U. S., 681. It was ruled in that case that it does not follow as a necessary consequence from the statutory right of a connection of tracks, or a prohibition against undue or unwarrantable discrimination in facilities, that any railroad company which forces a connection of its road with that of another company has a right to require the company with which it connects to do a through business at joint rates at the place of junction, if it does a similar business with any other company at another point and under dissimilar circumstances. *Ibid.*, 683.

The Act to regulate commerce adds materially to the provision of the constitution of Colorado under consideration in that case, but many of the general principles so strongly and clearly expressed by the Chief Justice may still be safely consulted.



The consequences of a principle sought to be applied are sometimes a fair test of its soundness. If it be assumed that one road can make a track connection with another at any point it may choose and then demand a business connection on the same terms as may be afforded to other roads elsewhere, the practical effect is to make an initial carrier dominant over all connecting carriers to any remote point of shipment.

The authority given by law to connect roads so as to form continuous lines of transportation implies that these connections are to be formed by mutual agreement. And the provision that such lines must afford all reasonable, proper and equal facilities for moving traffic to other lines also implies inquiry into the reasonableness and propriety of the facilities demanded in any case. Unless a carrier can be protected against an unreasonable demand for an interchange of business at an inconvenient place, or at a sacrifice of its interests, it may be subjected to serious injury and lose proper control of its own business, and the effect may be to retard instead of to accelerate transportation.

It would seem to follow that a carrier is not arbitrarily, and under any circumstances, required to erect depots, yards and sidings, and maintain a force of employees necessary for business interchanges, at any point where another carrier may locate a track connection, and that the necessary facilities are ordinarily supplied when afforded at regular depots sufficient for the purpose. Certain implications may sometimes be allowed to give full effect to general enactments, but when a right or duty is demanded under an implication that is doubtful or plainly inconsistent with other rights it is safer to await positive legislative action thereon. In exceptional cases, involving a necessity for business connections elsewhere by reason of the opening of a new line, or the volume of business to be accommodated, it may be assumed that carriers will find it to their interest to make suitable provision for them; or the peculiar facts of the case might warrant appropriate action to enforce the interchange.

In this case, the defendant, it is understood, makes no objection to receiving and delivering through freight carried

over the petitioner's bridge at local Louisville rates the same as for any other Louisville shipper or consignee. It appears in evidence that the defendant company has arrangements with the four roads entering Louisville from the north side of the Ohio river by the Louisville bridge for interchanging freight traffic upon terms and conditions agreed upon between them, and the defendant refuses to receive freight from those roads except upon the terms and conditions agreed upon. If those roads bring freight to Louisville in violation of the agreement, the defendant refuses to receive and transport such freight except as a local Louisville shipper, and the freight so received is treated the same as freight tendered for shipment by Louisville shippers.

The Ohio and Mississippi railroad is one of the roads with which the agreement referred to in the testimony was made. Under its agreement it has the same rights for interchange of traffic with the defendant over the Louisville bridge as the other roads that enter Louisville by that bridge, and when it violates that agreement by bringing its freight over the petitioner's bridge its freight is not refused, but is received as from Louisville shippers. The same rule is applied to the other roads, and all are upon an equality in that respect. The Ohio and Mississippi road is not denied any privileges or facilities that the other roads enjoy. Its grievance is that its rescission of its contract with the defendant and with the Louisville Bridge Company is not acquiesced in, and that exceptional facilities are not afforded it. It is not shown that any controlling necessity exists for the change. No reason for it relating to transportation appears in the evidence. Its action is apparently taken from choice.

Incidental to the question of a through route over the petitioner's bridge and terminal tracks as matter of right some other facts appear in the testimony.

By a provision of the charter of the defendant (section 18) power is reserved to the State of Kentucky to incorporate a company or companies to build a railroad or railroads, and that any and all such railroad or railroads thereafter constructed may connect and join with the railroad of the defendant; and the same section also enacts "that it shall not

be lawful for any other company or any other person or persons to travel upon or use any of the roads of said company (the defendant) or to transport persons or property thereon without the license and permission of the president and directors thereof."

By the charter of the petitioner it is authorized "to run any line of railways through the city of Louisville . . . . to connect with any railway bridge, transfer company or depot," and by later amendments "to construct such line or lines in the county of Jefferson, Kentucky, as may be necessary to complete the connection with other railways or depots."

The original charter contemplated a connection at a depot, and the subsequent amendments, although not very clear, might seem to allow a connection elsewhere, but that is by no means the necessary construction.

An amendment to the defendant's charter, made in 1860, provides "that said company may make arrangements with other companies for through freight and passage from distant points, on such terms as they may agree from time to time." The ordinances of the city of Louisville granting to the petitioner the right to lay its tracks in that city provide that the petitioner shall permit other roads desiring to connect through such portions of the city to use the railway tracks laid down pursuant to the ordinances, upon conditions specified as follows: "That before entering upon the use of said tracks said railway company shall pay to the Kentucky and Indiana Bridge Company, its *pro rata* share of the cost of constructing the same, including damages awarded by reason of the construction thereof, and shall bind itself by contracts with the city of Louisville for the benefit of all parties interested, that it will contribute its *pro rata* share toward the repair and maintenance of said tracks and toward the construction and maintenance of any additional tracks, and of any gates, approaches, culverts, bridges or trestles, or fills, that may be necessary to the safe and efficient use of said tracks, and towards the maintaining of such watchmen as may be necessary to the proper guarding of the street crossings, and such roads shall be subject, under such use, to all the provisions of this ordinance."

What authority the city of Louisville had to include such conditions in its ordinance does not appear, unless from a clause in the petitioner's charter authorizing it to "run any number of lines through the city of Louisville, upon such terms as may be prescribed by ordinance of said city of Louisville, or along any street or alley, to connect with any railway bridge, transfer company or depot." Whether these conditions have any force, and whether they may apply to interchanges of through traffic over the petitioner's bridge and tracks in Louisville, may be controverted questions, but that possible contention may grow out of them is apparent. They may fairly be considered, therefore, upon the question of compelling a through route.

The contract of June 5, 1872, entered into by the Louisville Bridge Company, the Jeffersonville, Madison and Indianapolis Railroad Company, the Ohio and Mississippi Railway Company and the Louisville and Nashville Railroad Company, and which, by its terms, was to continue in force until the expiration of two years after written notice of an intention by any of the parties to recede from it, is strongly urged by the defendant as a valid objection to a compulsory interchange of through traffic with the Ohio and Mississippi railway over the petitioner's bridge.

On the 4th of February, 1888, the Ohio and Mississippi Railway Company gave notice of its intention to withdraw from the contract at twelve o'clock noon of that day. The two years stipulated in the contract, during which it should continue in force after notice, will not expire until February 4, 1890.

By the contract the several railroads parties to it agreed, among other things, to pass over the Louisville bridge all the freight, passengers, mails, express matter, and other goods carried on or over this road to and from Louisville, and to and from points which require their passage over the Ohio river at or near Louisville during the existence of the agreement.

The petitioner claims that this contract was abrogated by the provisions of the Act to regulate commerce. The defendant insists that it is unaffected by that Act. Whether

congressional legislation can rightfully impair the obligation of a valid contract was not discussed, and is not involved. As the powers of Congress are granted powers, it may be, as some argue, a fair presumption that the framers of the Constitution understood that the instrument contained no actual or implied grant of power to destroy the obligation of a contract in view of the careful inhibition of the exercise of such power by the States. On the other hand, if, as argued by others, contracts must be deemed entered into in contemplation of possible legislation, under constitutional powers, that may arrest their fulfillment, and therefore, if embraced within the scope of the power, are subject to legislative authority; nevertheless, in that view the purpose to annul a contract by law should affirmatively and clearly appear, or be the necessary effect of a strict construction of the statute. The obligation of a contract is its binding force for all the lawful purposes for which it was made.

Parties to contracts may, as is claimed, be indirectly affected by general laws rendering the performance of their agreements oppressive or otherwise and diminishing or enhancing their value. Revenue laws are instances of this character. But parties are not relieved from the obligation of a contract because its performance may be more burdensome to one, or more profitable to another, whether by reason of legislation or other causes. A tax on contracts does not affect their obligation or validity. *Moore v. Moore*, 47 N. Y. 467.

A State, in the exercise of its sovereign power to construct a public work, cannot, by suspending the work, escape the obligation of its contract. *Danolds v. State of N. Y.* 89 N. Y. 36. The Act to regulate commerce does not directly nor indirectly affect the contract in question. It adds no burden to it whatever. The contract is as easy of performance and as beneficial in all respects as before the Act. It was entered into under statute authority and was valid when made. It was in aid of commerce and beneficial to the public and to the parties. It is not repugnant to the provisions of the Act. It is not like pooling contracts, or contracts for dis-

criminating rates and rebates which are invalid without a statute declaring them void, because immoral and against public policy. It belongs to the class of contracts expressly recognized by the Act. The sixth section provides that "every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party."

The Act affords no warrant for the argument that it abrogates this contract. Even in England where the power of Parliament is supreme, the courts have ruled that the legislative intention to annul a contract should appear by express enactment or be necessarily required by the language of the act strictly construed. *S. E. R. Co. v. R. Com'rs L. R. Queen's B. Div.* 231.

But the Ohio and Mississippi railway says, through the petitioner, "the Act to regulate commerce has created a new right, and by claiming that I can absolve myself from the obligation of my contract, and compel those with whom I contracted to support me in my course and enter into new and different relations with me."

The answer is that the law does not authorize this to be done, and that the new right is not absolute, but in a measure conditional. Laws do not favor violations of contracts, but punish parties that break them. If it be said that the contract remains valid, but the defendant must submit to a breach of it and lose its benefits, and resort to an action of damages for redress, that imputes to the law the paradox that the contract is valid, but binds no one, and a suit may be brought for the breach of an agreement that may be lawfully broken.

If the contract is valid, as it clearly is, the direct and simple mode of dealing with it is to regard it as a satisfactory and valid objection to the demand of the Ohio and Mississippi railway for a new traffic arrangement under different circumstances. It is not reasonable, pending this contract, which confessedly affords reasonable, proper, and equal facilities to all concerned, to sustain a demand for a different mode of interchange involving a necessity for other agree-

ments, and to be followed by litigation to settle disputed rights.

It was urged on the argument, and it is manifest, that though this proceeding is nominally for a through route over the petitioner's bridge, its ultimate object is for through rates by that route. The pleadings do not distinctly make an issue for a rate, and the evidence furnishes no foundation for an order on that subject. But the question has been brought into the discussion, it would seem, with the view of eliciting some ruling or expression with regard to the right to a through rate. And if the right to the route be allowed it may be difficult to distinguish the right to the rate. The argument that finds support for the one demand in the requirement for equal facilities, as an unconditional right, applies with great force to the other, if a through rate is to be construed as a facility under our statute.

The English statute in terms enumerates through rates as one of the facilities to be afforded. But under the English statute the right to a route or rate, if objected to, must be determined by the Commission in view of its reasonableness.

The Act provides that "if objection be made to the granting of the rate, or to the route, the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly."

"The Commission, in apportioning the through rates, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, and making of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof."

Our statute contains no such enactments. But it is plain from the language of the third section in the clause requiring carriers to "afford all reasonable, proper, and equal facilities" that authority to decide upon the reasonableness of



the facility demanded, whether a route with interchanges, or a rate, is lodged somewhere, and is one of the powers conferred upon the Commission. And in determining the reasonableness of the facility demanded whatever legitimately and lawfully affects the question is to be considered, as well as the corporate and physical power to comply.

In view of the vast network of railways in this country and the great extent of territory traversed by them, the diversities that characterize the roads, their differences in length, and in cost of construction and operation, the character of traffic they carry, their financial condition, and many other things, it is obvious that very many considerations enter into the making of continuous routes or joint through rates, and that the corporate and physical power of doing so is only one, and not the most important. As an illustration, if a line from the seaboard to Chicago, like the Pennsylvania line, should have a connection for through business, on joint rates to St. Paul, and the other six lines between Chicago and St. Paul should demand equal facilities, would the physical possibility of affording them alone control, or would the circumstances materially affecting the reasonableness of compliance be lawfully entitled to consideration?

Chief Justice Waite states as the judgment of the Court in 110 U. S. Rep. :

“ At common law a carrier is not bound to carry except on his own line, and we think it quite clear that if he contracts to go beyond he may, in the absence of statutory regulations to the contrary, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of the contract, and if he holds himself out as a carrier beyond the line, so that he may be required to carry in that way for all alike, he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position by extending his route with the help of others than he would if the means of transportation were all his own. He certainly may select his own agencies and his own associates for doing his own business.”

How much of the rights thus declared remain under the "statutory regulations to the contrary" of the Act to regulate commerce is an important question. If through rates are included in the equal facilities to be afforded the reasonableness of the mode of affording them would seem to remain. And in that respect considerations are involved of a like nature as in the interchange of traffic.

In this case there is no refusal by the defendant of interchanges of traffic with the Ohio and Mississippi road, nor of a through rate upon the traffic interchanged. The contention is concerning the mode of interchange. The defendant insists that in view of its contract obligations and the other reasons given it should be done over the Louisville bridge and at its own yards and stations, where the defendant makes exchanges with other companies and "takes on and lets off passengers and property for others," and which "in the exercise of its legal discretion it located for its own convenience and that of the public."

The demand in behalf of the Ohio and Mississippi road is for a mode of interchange including a through rate, that the defendant deems unreasonable and unlawful. It appears that the interchanges have gone on without interruption for sixteen years, that the public has been adequately served, and that the defendant is willing and desirous to continue the same mode of conducting a through business which is in fact equal to all. The only reason given for changing this mode is that the Ohio and Mississippi road desires to use another bridge. The defendant has an equal right to use the bridge to which its depots and business facilities are adapted. This important fact, together with its large pecuniary interests in that bridge, and its contract relations to it, furnish reasonable and lawful grounds to support its position. Upon the question of interchanges with the Ohio and Mississippi road the order of the Commission should therefore be that the defendant's position is sustained.

THE LINCOLN BOARD OF TRADE v. THE UNION  
PACIFIC RAILWAY COMPANY, AND THE SOUTH-  
ERN PACIFIC RAILWAY COMPANY.

The grounds of complaint stated in the petition having been obviated by changes in the rate sheets, the Commission abstains from any expression of opinion upon them.

The case above entitled was heard at Lincoln, Nebraska, March 21st and 22d, 1888, where voluminous testimony was taken. The following cases were heard with it:—

I. FRIEND & SON v. THE SOUTHERN PACIFIC COMPANY, THE DENVER & RIO GRANDE RAILWAY COMPANY, and THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY.

RAYMOND BROTHERS & CO. v. THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, THE DENVER & RIO GRANDE RAILROAD COMPANY, THE DENVER & RIO GRANDE WESTERN RAILWAY COMPANY, and THE SOUTHERN PACIFIC COMPANY.

PLUMMER, PERRY & CO. v. THE UNION PACIFIC RAILWAY COMPANY and THE SOUTHERN PACIFIC RAILWAY COMPANY.  
Two cases.

THE LINCOLN BOARD OF TRADE v. THE BURLINGTON & MISSOURI RIVER RAILWAY COMPANY IN NEBRASKA, THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, THE DENVER & RIO GRANDE RAILWAY COMPANY, THE DENVER & RIO GRANDE WESTERN RAILWAY COMPANY, and THE SOUTHERN PACIFIC RAILWAY COMPANY.

Counsel appeared in the cases as follows:—

*G. M. Lambertson* and *O. P. Mason*, for complainants.

*Charles H. Tweed* and *W. H. L. Burnes*, for The Southern Pacific Company.

*Edw. O. Wolcott* and *J. F. Vail*, for The Denver & Rio Grande Railway Company and The Denver & Rio Grande Western Railway Company.

*C. J. Green*, *T. M. Marquette* and *Wirt Dexter*, for The Chicago, Burlington & Quincy and Burlington & Missouri River Railroad Company in Nebraska.

*J. M. Thurston, Shellabarger & Wilson, and A. J. Poppleton*, for the Union Pacific Railway Company.

In all the cases complaint was made of the rates charged by defendants for the transportation of freights from Pacific coast points to Lincoln. These rates were higher than were charged for the transportation of like freights from the same points to Omaha, and the defendant roads were charged with unjust discrimination as against the people and traders of Lincoln in making them so.

In some of the cases a violation of the "long and short haul clause" of the fourth section of the Act to regulate commerce was charged; one of the lines on which Pacific coast shipments were made to Omaha being through Lincoln, and Omaha being nevertheless given the lower rate.

In the cases to which the Union Pacific Company is a party a further question was raised, whether the people of Lincoln on the ground of representations which were made to them when the road from Valley to their city was constructed—that they should have the same rates from the Pacific coast which should be given the Missouri river points—might not now require the company to make good their promise, or as it is called in the record, their guaranty.

The questions were fully argued by counsel and submitted for decision, but before decision had been filed the defendant carriers had made such changes in their trans-continental rate sheets as would put Lincoln on an equal footing with Omaha and other Missouri river points, and give it the same rates for the transportation to it of merchandise from points on the Pacific coast. The principal grounds of complaint set out in the several petitions were thus removed.

Under these circumstances no opinion is filed, and the complainants have leave to withdraw their petitions.

IN THE MATTER OF THE CHICAGO, ST. PAUL AND  
KANSAS CITY RAILWAY COMPANY.

Heard at Dubuque, Iowa, July 25, 1888. —Decided September 19, 1888.

A railroad company which, for cases not apparently affected by water competition or by the competition of carriers not subject to the Act to regulate commerce, had issued rate sheets which in many cases made for the transportation of like freights the greater charge for the shorter haul on the same line in the same direction, the shorter being included in the longer distance, was called upon to justify such rate sheets at a public hearing.

Notice ordered to be published of such hearing, that competing carriers and the public generally might have opportunity to attend and be heard.

The showing by respondent that a competitor for business between the termini of its line makes charges for the transportation of freight which are below what are reasonable and just to the carrier itself, does not alone make out the dissimilar circumstances and conditions entitling the respondent to make charges for the transportation of freights from one terminus to an intermediate station which are greater than those made for the transportation of like freights from the same terminus to the other.

The provision in the first section of the Act to regulate commerce, that "all charges made for any service rendered, or to be rendered, in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage or handling of such property shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful," does not render rates that are unreasonably low illegal in a sense that will authorize the Commission to prohibit their being made.

The Commission has no power to order rates to be increased upon the ground that they are so low that persistence in making them would be ruinous.

Congress, in the provision above recited regarding rates, was legislating for the protection of the general public, and not for the protection of the carriers against the unreasonable action of their own officers, or against excessive competition. The Act to regulate commerce assumes that the carriers, in their power to make rates, have ample remedy to protect against rates which are unreasonably low.

A leading purpose of the Act to regulate commerce is to prevent the giving of unjust preferences and advantages, as between localities, in railroad transportation. This purpose would be defeated if any one carrier by making unreasonably low rates to any locality, would thereby entitle all other carriers competing with it to make on their lines greater

charges upon the shorter hauls to other stations than were made over the same line in the same direction to the locality thus favored.

*A. B. Stickney* and *C. W. Bunn*, for the Chicago, St. Paul & Kansas City Railway Co.

*D. S. Wegg*, for the Wisconsin Central Railroad Co.

*J. W. Lozey*, for the Chicago, Burlington & Northern Railroad Co.

*W. C. Goudy*, for the Chicago & Northwestern Railway Co.

*J. T. Fish*, for the Chicago, Milwaukee & St. Paul Railway Co.

*E. M. Pope* and *A. D. Keyes*, for the Faribault Board of Trade.

#### REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman* :

The Chicago, St. Paul and Kansas City Railway Company operates a line of railway from Chicago, Illinois, through Dubuque, Iowa, to St. Paul, Minnesota, and Minneapolis, with a branch line from Allwein, Iowa, to Des Moines, in the same State. On June 6, 1888, the Commission received from this company, hereinafter called the respondent, the following communication :

ST. PAUL, MINN., *June 2, 1888.*

*To the Honorable Interstate Commerce Commission,  
Washington, D. C.,*

GENTLEMEN: Owing to the action of competing lines covering rates between Chicago, St. Paul and Minneapolis, this company has been obliged to promulgate since the 7th day of last February no less than nine different tariffs, and having regard to the principles of the Interstate Commerce Law, this has required us nine times in 113 days to re-adjust rates all over our line.

No longer ago than May 22d last, at a meeting of all the roads interested in the traffic between Chicago, St. Paul and

Minneapolis, a unanimous agreement was arrived at to put into effect on June 4th a tariff covering this traffic, schedules printed, and the necessary ten days' notice was given by all the companies.

Before the ten days expired we were notified by the Chicago, Burlington and Northern Company that on the 4th day of June, 1888, instead of the tariff agreed upon it would put in effect between Chicago and St. Paul and Minneapolis a materially lower schedule of rates.

This company is not prepared to surrender its business between these points, and at the same time does not desire to disturb rates all over Minnesota, Iowa, and the States west of the Missouri river for the tenth time in less than three months, which a re-adjustment of its rates over the whole line in accordance with the long and short haul clause of the Interstate Commerce Law would necessarily bring about, and have therefore determined to assume the responsibility of meeting this competition between Chicago and St. Paul and Minneapolis without re-adjusting its rates at intermediate points, and if complaint is made will attempt to justify its action under the law.

We feel it our duty to at once notify you of our action, and enclose the tariff which we propose to put into effect June 4th.

Yours truly,

J. A. HANLEN,  
*Traffic Manager.*

Accompanying this was a tariff sheet issued by the respondent, by which rates for the transportation of merchandise between Chicago and St. Paul, Minneapolis or Minnesota Transfer were fixed as follows: First class, 40 cents per hundred pounds; second class, 33 cents; third class, 26 cents; fourth class, 18 cents; fifth class 12½ cents. They had immediately previous to this been as follows: First class, 60 cents; second class, 50 cents; third class, 35 cents; fourth class, 25 cents; fifth class, 17 cents. Other rates between the points above named were by the same tariff sheet reduced in proportion to the reduction made in the class rates. No reduction was at the same time made in the rates



between the terminal points above named and the intermediate stations, and as a consequence, the rates made by respondent for transportation from Chicago to all stations beyond Dubuque were considerably higher than the rates to St. Paul, Minneapolis, or Minnesota Transfer; and the rates in the other direction from these northern terminal points to intermediate stations were correspondingly higher than the rates to Chicago. Thus, from Chicago to Oneida, half the distance to St. Paul, the rates were: First class, 54 cents; second class, 44 cents; third class, 32 cents; fourth class, 23 cents; fifth class, 17 cents; which, as compared with the rates to St. Paul, as above given, will sufficiently illustrate the differences which the new tariff sheet then made. The highest intermediate rate before reaching St. Paul is sixty cents.

After the receipt of this communication the following order was entered:

At a session of the Interstate Commerce Commission held in the city of Washington, June 20, 1888.

Present: All the Commissioners.

IN THE MATTER OF THE CHICAGO, ST. PAUL AND KANSAS  
CITY RAILWAY COMPANY.

Whereas, a communication has been received from the Chicago, St. Paul and Kansas City Railway Company, informing the Commission that rates have been put in effect upon its line between Chicago and St. Paul, which are less than the rates in effect from said cities to intermediate points on the same line, the same being a *prima facie* violation of the fourth section of the Act to regulate commerce:

*It is therefore ordered*, that said company be notified that a public session of the Commission will be held at the United States court-house in the city of Dubuque, in the State of Iowa, on the 25th day of July, A. D. 1888, at 11 a. m., at which time and place said matter will be investigated, and an opportunity will then and there be given to said company to introduce evidence and be heard in justification of said rates; and

Whereas, the citizens of the several localities upon said line which are affected by the aforesaid rates are entitled to be heard upon said matter:

*It is further ordered*, that an opportunity be given them for that purpose at said time and place, and that they be notified thereof by publication of a copy of this order in certain newspapers published in said localities, to be hereafter designated for that purpose. And,

Whereas, other railroad companies engaged in traffic between Chicago, St. Paul and Minneapolis are also interested in the matter above stated, and in the basis upon which rates may lawfully be made in respect to said traffic:

*It is further ordered*, that an opportunity be also given them at said time and place to be heard thereon, and that notice thereof be given by mailing a copy of this order to the following named companies, to wit: the Chicago, Milwaukee and St. Paul Railway Company, the Wisconsin Central Railroad Company, the Chicago, St. Paul, Minneapolis and Omaha Railway Company, the Chicago and Northwestern Railway Company, the Chicago, Burlington and Northern Railroad Company, the Minneapolis and St. Louis Railway Company; and,

*It is further ordered*, that any other persons or corporations interested in the matter aforesaid by reason of residence upon any of said lines of road or otherwise may also be heard thereon at the time and place above designated.

Subsequent to the receipt of this order the respondent filed with the Commission a response as follows:

*To the Interstate Commerce Commission:*

For answer to the complaint of the Commission against the Chicago, St. Paul and Kansas City Railway Company, dated June 20, 1888, that this company has in effect upon its line between Chicago and St. Paul rates which are less than the rates in effect from said cities to intermediate points on the same line, this company desires to state what the facts are, and the reasons which induced its action in the premises, and point out the theory whereby its action is justified by and not in conflict with the Interstate Commerce Law.

This company commenced to operate its line between Chicago and St. Paul on the first day of August, 1887, and from that date to June 4, 1888, endeavored to and did conform all its tariffs to the provisions of section 4 of the Interstate Commerce Act; that between February 3, 1888, and said fourth day of June, owing to frequent changes of through rates between Chicago and St. Paul, which were all forced upon this company by reductions and alterations made by competing lines, this company in its efforts to comply with the fourth section of the Interstate Commerce Law, was compelled many times to alter its local rates, and actually printed and issued between August 1, 1887, and June 4, 1888, 453 distinct tariffs, many of which were in force but for a few days, and that besides local tariffs actually issued, local rates were often disturbed by the general direction in all its through tariffs that local rates should not exceed in any event said through rates.

The company admits that on or about the twenty-fourth day of May, 1888, it duly published a certain tariff of rates between Chicago and St. Paul, to take effect June 4, 1888, a copy of which is hereto attached and marked "Exhibit A," which rates it believes and affirms to be reasonable and just and in all respects conformable to law, and said tariff has been since that date in effect upon its line except as hereinafter stated.

That after the publication of said tariff had been commenced, but before it became effective, the Chicago, Burlington and Northern Company gave this company and the public notice that on the fourth day of June, 1888, it would put into effect on its line between Chicago and St. Paul a lower schedule of rates, to wit:

Class.....	1	2	3	4	5	A	B	C	D	E
Cents per cwt.,	.40	.33	.26	.18	.12½	.17½	.15	.13	.10	.08

and that said Chicago, Burlington and Northern Company did on or before said fourth day of June put into effect on its line said last-mentioned schedule of rates, and have ever since continued said schedule and lower schedules in effect upon its line.

That after said rates between Chicago and St. Paul had become effective upon the Chicago, Burlington and Northern Company's line, and in no instance before they became effective, this company adopted and put into effect on its line the same schedule of rates between the points mentioned, and this company admits that said rates are lower than some of the rates at the same time charged by this company on its line for intermediate distances and for shorter hauls.

This company claims that the rates now in force between Chicago and St. Paul are lower than reasonable and just rates, and are therefore unreasonable and unjust, and that such rates were not made by this company of its own free will, but solely on account of the competition before mentioned.

That as this company is informed and verily believes the said tariffs now in force, and which have been since June 4, 1888, upon the Chicago, Burlington and Northern railroad, have not produced revenue enough to pay the operating expenses of that road, and if applied to the whole system of this company they would produce like results.

At the same time, so far as this company is concerned, the larger part of its operating expenses are substantially a constant charge whether this company does any part of said business between Chicago and St. Paul, Minneapolis and Minnesota Transfer or not; that irrespective of whether it does any portion of said business it is obliged to employ the same number of station agents, section men, switchmen, and other track employees; it is obliged to pay the same amount of interest; the damage to its road-bed and property from the elements is the same; its general office expenses are the same, as well as many other expenses unnecessary to mention particularly; that, having said constant and fixed expenses to be paid whether any through traffic is done or not, this company is better off to do business between Chicago and St. Paul, Minneapolis and Minnesota Transfer, even at the present rates, than not to do business at all. For example, it costs, approximately, 27 cents per mile to run an additional through freight train over its road. The distance being 420 miles, this gives an approximate expense of \$113.40

per through train. Add to this \$80, which is \$4 per car terminal charges, and the result, \$193.40, shows, approximately, the additional cost to this company of adding one through train of twenty cars to the trains already being operated by it.

The revenue obtained from such train would be, approximately, as follows: Taking the lowest revenue per ton per mile furnished by any part of said traffic, which would be the revenue arising from coal and wheat, .0032 per ton per mile. Multiply this by 320, the approximate number of tons in the supposed train over the road of this company, gives a gross revenue of \$1.024 per mile for said train, or for 420 miles gives \$430.08 as the approximate gross revenue of said train over the road. Deducting \$193.40, the approximate additional expense to the company of putting on said train, and we arrive at \$256.68, which is revenue arising to this company from the putting on of the supposed through train in addition to its other trains, which revenue this company would not receive but for the putting on of said additional train, and which is applicable by it toward the payment of its general operating expenses, such as the expenses of station agents, trackmen and general office, and the payment of its interest, thus actually relieving the local traffic of said company from the payment of a portion of said expenses; that if the company abandoned its said through business entirely it would consequently be compelled to raise its local rates to a point still above what they are at present in order to produce the same revenue as if it engaged also in said through business.

That the competition of said Chicago, Burlington and Northern railroad at the points before mentioned was in actual existence on the fourth day of June, 1888, and was of controlling force in respect to traffic important in amount; that the volume of business between Chicago and St. Paul, Minneapolis and Minnesota Transfer is very large, and consists of all classes and descriptions of articles referred to in said tariffs; that said competition was not merely temporary or accidental, or upon the transportation of a single class of articles, but was permanent, so long as said tariff should be maintained and existing upon all varieties of freight, and

actually controlling and securing the traffic unless met by this company ; that said through traffic has furnished heretofore from twenty-five to thirty per cent. of the gross revenues of this company ; and as this company believes, it will be compelled to sacrifice, approximately, one-third of its gross income unless it is allowed to meet said tariffs made by the Burlington and Northern road irrespective of its local tariffs.

That this company is advised and believes that the said Burlington and Northern Railroad Company has failed to pay its operating expenses during each month in the year 1888, except during the month of February ; that, while its net earnings for January, February, and March, 1887, were \$185,843, its operations for the first three months of 1888 has not furnished a revenue sufficient to pay actual operating expenses ; that, as this company is advised and believes, said revenue for the first four months of 1888 was insufficient to pay actual operating expenses by the sum of \$2,698. This company alleges that, as a matter of fact, said tariffs before mentioned, and which have been in force on the Burlington and Northern railroad since the fourth day of June, cannot by any possibility be made to pay the actual operating expenses of that railroad, and are entirely unjust, being unreasonably low.

That, as this company is advised and believes, the said tariffs at present in force on said Burlington and Northern road do not pay and cannot be made to pay an actual gross revenue of .005 per ton per mile, and this company believes and alleges that the actual operating expenses of said railroad have not been and cannot be made less than about the sum of .005 per ton per mile ; that said company is now and has been, ever since the said third day of February, 1888, transporting its traffic at an actual loss, not realizing sufficient gross revenue therefrom to meet the actual expenses of doing the business.

This company alleges that for several years past the actual operating expenses of the best built, best equipped, and best managed railways in the United States, of railways having the largest volume of traffic, have never at any time fallen

very much below the sum of .005 per ton per mile of freight moved, and cannot be brought very much below that sum by any known methods applicable to railway management.

That as a matter of fact those railway companies in the United States which are best located, best constructed, best equipped and managed, and which have the largest volume of traffic, and which are surrounded by the most favorable possible circumstances and conditions, have collected and received upon the traffic transported by them a sum largely in excess of .005 per ton per mile, seldom falling below .007 per ton per mile.

That the rates hereinbefore referred to have reference to the classification known as the Western classification; that besides said tariffs above named the said Chicago, Burlington and Northern Railroad Company, on or about June 1, 1888, put into effect upon its line, and has since maintained, a certain tariff applicable only on proportion of through rates on shipments originating at or east of the western termini of the trunk lines—namely, Buffalo, Black Rock, Suspension Bridge, Pittsburgh, Salamanca, from Chicago, Illinois, to St. Paul, Minneapolis, or Minnesota Transfer. By the last tariff named the proportion of said through rates charged and received by the company between Chicago and St. Paul, Minneapolis, or Minnesota Transfer is as follows, subject to the classification known as the official classification :

	1	2	3	4	5	6
	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>
All rail.....	.31	.22	.23	.17	.11	.09
Part rail.....	.20	.19	.17	.10	.06	.03

That the classes referred to cover all possible merchandise, articles, or commodities carried from points east of Buffalo, etc., to St. Paul, Minneapolis, or Minnesota Transfer; that the rates referred to therein are lower than the said rates charged from Chicago to St. Paul, Minneapolis, or Minnesota Transfer upon business originating at Chicago or west of Buffalo, etc., above referred to; that all the allegations herein with respect to the unreasonableness of rates apply



with still greater force to the said through tariffs last mentioned ; that they are in every respect unreasonably and unjustly low ; cannot possibly pay for the expense of handling and moving the merchandise carried thereunder over the road.

This company alleges and insists that its local rates to and between all points upon its road are reasonable and just rates, and the same could not be reduced by this company so as to be within said through tariff forced on this company by competition without reducing the revenue of this company below a point which would pay its operating expenses.

This company further alleges that if its local rates shall be reduced so as to be within said through rates to points on its direct line between Chicago and St. Paul, said reductions would become effective at many local points in the State of Iowa where this company competes with other railroads from the city of Chicago ; that consequently a reduction by said competing railroads to said local Iowa points would be compelled, and this in turn would necessitate reductions to still other Iowa points, and the inevitable result would be the lowering of local tariffs to such a point as would be unreasonably low and unproductive to all the railroads running through the said State of Iowa.

This company respectfully submits that when the Chicago, Burlington and Northern Company, for some reason best known to itself, has deliberately adopted tariffs which it is susceptible of demonstration will not, if it can secure the whole tonnage between its two terminals, produce revenue more than sufficient to pay its operating expenses, and said Burlington and Northern Company being a competitor of this company at said terminal points, the Interstate Commerce Law does not compel this company to adopt such unreasonably low and unproductive tariffs over its whole line, or abandon important competitive business, which at the prices it can get in competition is of some advantage to it by contributing something towards its expenses and fixed charges.

Wherefore this company prays that it may be exempted,

by order of your honors, from observing the fourth section of the Interstate Commerce Law with respect to business between its terminal points, and be allowed to fix its rates between Chicago and St. Paul, Minneapolis, and Minnesota Transfer, to meet competitive rates without corresponding reductions of intermediate local rates ; or, if this relief cannot be granted to it, that your honors proceed to investigate the reasonableness of said competitive rates, and if found lower than reasonable and just rates, that you order all parties concerned to put in force such through rates as shall be reasonable and just.

CHICAGO, ST. PAUL AND KANSAS CITY  
RAILWAY COMPANY,

By A. B. STICKNEY, *President*.

On the day assigned for the hearing, by the order above recited, counsel appeared for the respondent, and also for the Wisconsin Central Railroad Company, the Chicago, Burlington and Northern Railroad Company, the Chicago and Northwestern Railway Company, and the Chicago, Milwaukee and St. Paul Railway Company. Counsel also appeared for the Faribault Board of Trade, and other interests were represented by parties concerned.

The chairman, in opening the session, after stating its purpose, called attention to the "long and short haul clause" of the fourth section of the Act to regulate commerce, and remarked that "it has been generally understood, and the Commission has so assumed in some cases, that certain things of a general nature might constitute the dissimilar circumstances and conditions which were in the contemplation of Congress when the Act was passed. That, for example, a competition by water routes might make out these dissimilar circumstances and conditions in some cases, and that perhaps the competition of railways that were not subject to the regulation of the Act might also establish the dissimilar circumstances and conditions. The Chicago, St. Paul and Kansas City Railway Company has made and put in force a tariff sheet whereby there will be made upon its

line charges for shorter hauls in the same direction which exceed those made for longer hauls over the same line, and it has assumed in making that tariff, as we understand it, that there are existing on its line the dissimilar circumstances and conditions to warrant it. But we do not understand that the dissimilar circumstances and conditions are supposed to be competition by water routes, or that they are found in the competition of carriers not subject to the regulation of the Act mentioned. When, therefore, the Commission was notified that such a tariff was to be put in force, it deemed the case one demanding consideration, and which it ought at once to take up, that the managers of the road might have the opportunity of explaining to the Commission what were the circumstances and conditions that in their view warranted their putting such a tariff in force. The matter is now before the Commission for the purposes of that explanation, and the managers can proceed to make it in such manner as they may deem best."

Mr. Stickney, the president of the respondent, thereupon proceeded with a map before him to explain the location of his road, and that of its competitors between Chicago and St. Paul and Minneapolis, these being the Chicago, Milwaukee and St. Paul Railway Company, the Chicago and Northwestern, the Wisconsin Central, the Chicago, Rock Island and Pacific in connection with the Minneapolis and St. Louis, and the Chicago, Burlington and Quincy in connection with the Chicago, Burlington and Northern. He also showed how the line of respondent was crossed by other lines, whose rates would be affected and disturbed if respondent was obliged to reduce intermediate rates to the level of those it had been compelled to make between its termini, and after pointing out the line of the Chicago, Burlington and Northern railroad, whose rates to St. Paul and Minneapolis, made in concert with the Chicago, Burlington and Quincy, had compelled a reduction of respondent's rates to those cities, he went on to say that if respondent were required to reduce its rates to the level of the lowest rates made by the Chicago, Burlington and Northern, the result would be that from a point twenty-five miles out of Chicago

there would be one level rate the whole distance to Minneapolis.

Mr. Stickney then proceeded to read a printed argument, in which, having referred to what has been heretofore said by the Commission as to the general purpose of the Act to regulate commerce, he proceeded to say :

" "There is one section of the law, which has not yet been considered by the Commission in any of its reported cases, which, to our mind, is the key to the whole law. A proper and natural construction of this section will correct all the evils complained of, and regulate the business in accordance with the requirements of justice ; the other sections—the third and fourth sections—which have thus far been appealed to by complainants and adjudicated by the Commission, in themselves, as we shall attempt to show hereafter, cannot remedy the evils, but, on the contrary, tend to increase them, and utterly fail in doing full justice to any one. The section we have referred to as the key is the last clause of the first section, which reads as follows :

" 'All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just ; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.'

"It is our contention that this clause prohibits and makes unlawful a rate or charge which is *too low*, as well as a rate or charge which is *too high* to be just and reasonable ; that this is the plain, ordinary meaning of the language used, and that if this interpretation prevails the objects of the law, as the Commission has conceived them, are effectuated. With any other interpretation the law becomes ineffectual for any such purpose.

"It is our contention that the law is a general law, and its protection is extended to all persons ; to the companies, the widows and orphans whose little or big fortunes may be invested in railways, to the investment of trust funds, savings

banks, and even the capitalists, as well as the persons who may be customers and patrons of railways. All equally need and are equally entitled to the protection of the law upon principles of equity. That a law expressly enacted to prevent unjust discriminations ought not to be so administered or construed as to produce discrimination. It is our contention that the law is broad enough when the whole law is considered to give this protection and to do equity to all, but that the third and fourth sections alone cannot give protection, nor do equity to any, and at most, but partial justice to a few. Heretofore it appears to have been assumed that the law extended no protection to the companies, or that large portion of the public who are investors and owners of railways. It has perhaps been assumed that the companies were competent to protect their own interests, therefore needed no protection under this law, and that the only persons needing protection were the customers of the companies, and that the rights of customers could be protected without protecting the rights of the companies. The law has now been in force fifteen months, and I shall attempt to point out to the Commission how, up to this time, it has failed to accomplish for the customers of the companies the correction of any of the evils it was intended to correct, and further that it is impossible to do equity to that portion of the general public which I designate as customers of the companies without enforcing these provisions of the law which we claim are intended to do equity to the other portion of the general public—the companies and the owners of railway property as well as the customers.

“It is our contention that the root of all the evils named which the law is intended to cure, to both branches of the general public named, is the ‘cutting of rates.’ By a ‘cut rate’ we mean a rate made by a railway company which is lower than the just and reasonable rate which it is entitled to receive for the services performed. Without a ‘cut rate’ none of the evils complained of could possibly exist, and as long as a ‘cut rate’ can be made or is in existence anywhere none of the evils complained of can possibly be prevented.

“If the first section can be construed to prohibit and make

unlawful a rate which is so low as to be unreasonable and unjust, as well as a rate which is so high as to be unreasonable and unjust, then we have a law which in theory is perfect, and if it can be perfectly administered will be a perfect remedy; but if such a construction cannot be given to it, then, as we have before said, the law is imperfect, and its administration or enforcement will aggravate and increase rather than remedy most of the evils."

Mr. Stickney then pointed out at length and with illustrations the evils that flowed from the unrestricted exercise of a right by one carrier to make rates at discretion; how this resulted in the favoring of localities not only on its own line but necessarily also on the lines of other carriers; he contended that an unreasonably low rate was a "cut rate," and that no adequate regulation of railroads was possible unless it could be restrained and prevented. He closed his argument by saying:

"Now, what is the remedy? We contend that an adequate remedy can easily be found in the principle that all rates must not only be reasonable but just. We contend that the last clause of the first section of the Act is more than an enactment into statute of the common law that all charges of the common carrier must be reasonable in the sense that none must be excessive. This statute goes further and says that rates must be just and 'every unjust charge is prohibited and declared to be unlawful.' Webster defines the word 'just' to mean exact, proper, accurate, equitable, *impartial*, conformed to the rules of justice, and 'justice' is defined to mean 'the virtue of giving to every one what is his due, practical conformity to the laws and the principles of rectitude in the dealings of men with each other, honesty, in integrity in commerce or mutual intercourse.'

"We claim that under this law no railway company is at liberty to make an unreasonable or unjust rate. It may not make a rate so high as to be excessive nor so low as to be unjust.

“ We claim that the essence of the law—the vital principle which makes the law what the Commission has declared it to be, an Act to regulate commerce, intended for the protection of the general public, and its prevailing principles—equality for all persons and communities—is contained in the last clause of the first section, and subsequent sections are cumulative, explanatory, and designed to aid in enforcing the vital principle.

“ The power to make an unjustly low rate, which we have heretofore denominated a ‘ cut rate,’ is the ‘ root of all evil,’ and unless the law has eradicated that root and divested the companies of that power it must utterly fail to accomplish the purposes of ‘ equity to all persons and localities,’ which the Commission has declared and which we fully believe was its purpose.

“ But it may be asked has not a man a right to do with his own what he pleases? And shall the law interfere with a railway company which may desire to give away its services?

“ We do not think it necessary to answer this objection to the Commission, as the principle is too well understood by them, but to the general public we might say that it is our understanding that no principle of law is better established than that a man may *not* in all cases do what pleases him with his own. A man may not burn his own house when the probable result would be to burn his neighbor’s house also.

“ It has been repeatedly held that railroads are a public agency. The authority to construct them with extraordinary privileges in management and operation is an expression of sovereign power only given from a consideration of great public benefits which might be expected to result therefrom. Every grant of such a privilege results not only the right but the duty of protection and regulation, so as to secure equity for all persons and communities.”

At the conclusion of Mr. Stickney’s argument counsel for the Chicago, Burlington and Northern Railroad Company made a brief statement of the position of his company,



claiming for it the best line in point of grades and curvatures of all the competing lines, and an ability to do profitable business at the lowest rates. "We claim," he said, "that it can carry freight less than the other lines, and we claim that it has a right to carry freight at any figure it pleases; and that it has a right to compete on its own basis. Nobody complains against it, but Mr. Stickney comes and says that this road is doing its business too low. It seems to us that this road has a right under the law to fix its own rates, and that it should not be called upon to show that its rates not remunerative to itself, or such that these other roads cannot meet. Now, that is the question before this Commission." In the same connection something was said by counsel about the right of "survival of the fittest," but without explanation of the designed application in the case. Whether it was meant that the Chicago, Burlington and Northern, having, by reason of its more favorable gradients and curvatures, the power to destroy its rivals in a life-and-death struggle, might rightfully do so, was left to conjecture.

Respondent then proceeded to produce evidence, and witnesses were also called by the Chicago, Burlington and Northern, and by other parties.

W. B. Hamblin, general traffic manager of the road last named, was called for respondent, and was examined with the purpose principally to show that the rates of his company were such as precluded its doing a profitable business.

From his testimony it appears that the rates on his road from Chicago were the same to Prairie du Chien as to Minneapolis, 202 miles beyond, and were the same to all intermediate stations between the two named.

At the time the Chicago, Burlington and Northern went into operation in 1886, it appears that rates between Chicago and St. Paul, by all the lines, were as follows:

1	2	3	4	5
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
40	30	20	15	10

⌈ This was by joint tariff issued by agreement. At that time rates to intermediate stations were in many cases higher

than to the terminal stations. Since that time the rates between the terminal stations have sometimes been higher and sometimes lower. The rates now in force on class 5 and the lettered classes are precisely the same which were put in force by the respondent road in August, 1887, without consultation with its competitors. Class 5 and the lettered classes constitute a very large proportion of all the business of the roads.

On May 29, 1888, the witness sent the following letter to Chairman Faithorn, of the Northwestern Freight Association :

“DEAR SIR : We desire to notify you that on June 4, 1888, our rates between Chicago and St. Paul, Minneapolis, and Minnesota Transfer, will be—

1	2	3	4	5
—	—	—	—	—
40	33	26	18	12½

Our reason for making rates as above are as follows : At a meeting of the Northwestern Association, of which our line is not a member, but at which we were notified to be present, all the other lines urged us to assent to the rates (the sixty-cent scale) which all said lines had adopted. We assented to said rates, against our own interests, for the sole purpose of assisting our competitors to regulate their local rates in accordance with their necessities, which they alleged to be very pressing. No sooner had our assent been given to the sixty-cent scale than many of our competitors began to make an improper use of the advance, by alleging that the advance was made by us for the definite purpose of discriminating against Chicago trade, when in fact said rates were made for the sole purpose of enabling said competing lines to re-arrange their local rates on, as they alleged, a fairly consistent basis.

“Finding that many of our patrons would be discriminated against by the sixty-cent scale, owing to the extremely

low rates from the sea-board prevailing by Lake Superior lines, we have decided upon the scale above given.

“ Yours truly,

W. B. HAMBLIN.”

N. B. Hinckley, auditor of the Chicago, Burlington and Northern, gave the gross earnings of his company for the first six months of 1887 as follows:

January.....	\$155,656 30
February.....	183,448 76
March.....	282,397 98
April.....	207,742 18
May.....	238,403 18
June.....	202,637 29
<hr/>	
Total.....	\$1,270,285 69

The same for six months in 1888 :

January.....	\$108,834 96
February.....	165,124 39
March.....	73,322 55
April.....	127,986 68
May.....	146,089 27
June.....	174,003 75
<hr/>	
Total.....	\$795,361 60

The net earnings for the first six months of 1887 above operating expenses the witness stated to have been \$331,575.81. The surplus above operating expenses for the first six months of 1888 was \$3,896.62. But in operating expenses the witness did not include taxes, \$56,704.50, nor rent of tracks, \$29,040.48, which, if added to the operating expenses for these five months, would make an excess of some eighty thousand dollars above gross earnings. Nor in the operating expenses was any account taken of depreciation of rolling stock or other property, nor of the keeping up of the equipment nor of the road.

The great falling off in the business of 1888 from that of

1887 the witness accounted for by a strike of engineers on the Chicago, Burlington and Quincy system. For the year 1887 the witness claimed his road earned its operating expenses and fixed charges.

The gross earnings of the road from freights the witness estimated to average about  $4\frac{1}{2}$  mills per ton per mile.

J. A. Hanley, traffic manager of the respondent, testified that since the 1st of August, 1887, his company had printed 498 different tariffs. He had been compelled to change the local tariffs as often as there was a change in the through tariffs by any competing road. There was a cut in rates, he said, February 3d of this year, again February 8th, again February 10th, again on the 15th, on the 20th, on the 25th, and on March 2d. His company put in force the tariff it is now acting under because of the action of the Chicago, Burlington and Northern. It would have been impossible for his company to have done any part of the through business if it had not reduced its through rates to meet the rates of the other road.

Witness believes the rates to the intermediate stations, as now fixed, to be reasonable.

President Stickney testified that he thought the present local rates were reasonable; to reduce them to the St. Paul rate would seriously affect the revenues of his company. If the company were to advance its through rates to the sixty-cent standard it would have to go out of the through business, and that would reduce the revenue of the road about 25 per cent.

Witness gave figures from official reports which he claimed showed that the C., B. and N. was steadily falling behind, and that it was doing business lower than any successful road in the country. In his opinion the tariffs at present in force between St. Paul and Chicago are not sufficient to pay anything substantial over and above operating expenses to any railroad. A reduction of the local rates on his road would affect very materially all rates over Iowa and Southern Minnesota, and away out into Kansas and Nebraska more or less.

Witness testified that the sixty-cent rate was carried by his road to the last station before reaching St. Paul, and which was 14 miles distant therefrom. He also testified that the competition by way of Duluth is between St. Paul and eastern points; it is not between Chicago and Duluth. There is no competition by lake between Chicago and St. Paul by way of Duluth; so that on business that originates at Chicago and south of there Duluth has no influence on rates.

William H. Truesdale, receiver of the Minneapolis and St. Louis Railway Company, testified that in his opinion no road would be able to transact its business, however large, on the basis of  $4\frac{1}{2}$  mills per ton per mile for its freight which had been stated to be the gross revenue of the Chicago, Burlington and Northern. Figures were submitted to show that the receipts per ton per mile by leading lines in the country—the Pennsylvania, the Lake Shore, the New York Central, the Michigan Central, and the Pittsburgh, Fort Wayne and Chicago—were much in excess of this, ranging for 1886 from 6.39 to 7.60 mills per ton per mile.

Much other evidence was given, but the points to which it was principally directed sufficiently appear from what is above stated. The evidence showed very conclusively that the rates in force on the Chicago, Burlington and Northern between Chicago and its northern termini were very low, perhaps ruinously so, but it also demonstrated that the managing officers of respondent were chargeable with no small share of responsibility for the unsettled condition of rates in the northwest.

Briefs were filed in the case on behalf of the respondent, and also on behalf of the Chicago, Milwaukee and St. Paul Railway Company, supporting the same views. In opposition were filed briefs for the Chicago, Burlington and Northern Railroad Company and for the Faribault Board of Trade.

The foregoing statement of the case has been made very full, that the position of respondent might be clearly seen

and its merits fairly presented. In now entering upon a discussion of the case upon its facts, it is important first of all that the exact question which awaits decision should be distinctly brought to the front. Much of the discussion by counsel has apparently assumed that the question chiefly involved was one of reasonable rates, and that when satisfied in this regard the Commission might deal with the rates as justice should seem to require. This assumption might be warranted if the authority of the Commission over rates was unlimited, which is far from being the case. All its powers come from the statute, and none can be exercised which are not expressly or by plain implication conferred. It is not uncommon for the legislature, in the exercise of its unquestionable authority, to prescribe rules of general justice which judicial and administrative tribunals are not at liberty to depart from, even when in particular cases they are found to be productive of hardship. It prescribes such rules because convinced that their operation will commonly be beneficial, and on the whole promotive of the general welfare. If they so operate in exceptional cases as to cause hardship they are not the less law for that reason.

Such a rule prescribed by the supreme legislative authority for the regulation and limitation of railroad rates is now in question. It is prescribed by the fourth section of the Act to regulate commerce, which among other things provides that "it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of the like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance." There is a proviso which empowers the Commission on application in special cases to relieve a carrier from the operation of this rule, but in all other cases the rule admits of no exception. Wherever, therefore, on any line of railway to which the act applies a carrier transports persons or property in the same direction for shorter and longer distances under substantially similar circumstances and condi-

tions, the charge made or compensation received for the shorter haul, if greater than that made or received for a longer which includes it, is illegal unless such a relieving order exists.

The respondent has put out and is enforcing a tariff of rates for the transportation of property which in a large number of cases makes the greater charge for the shorter haul on the same line and in the same direction. On first-class merchandise transported from Chicago in the direction of St. Paul and Minneapolis the rate increases with some degree of regularity until it is sixty cents, and this rate is then continued to the last station before reaching St. Paul, when it drops suddenly to forty cents at that city, and is the same at Minneapolis. At Oneida, half way from Chicago to St. Paul, the rate is fifty-four cents; and this, in comparison with the St. Paul rate, will sufficiently illustrate the relative inequalities which the new tariff introduces. The general rule of justice the statute prescribes is thus seen to be unlawfully departed from, unless it is made to appear that the transportation from Chicago to Oneida—taking the single station for illustrative purposes for the sake of brevity—is under circumstances and conditions not substantially similar to those under which the transportation is made by respondent from Chicago to the northern termini of its road. In putting out this tariff respondent has assumed that dissimilar circumstances and conditions exist in the two cases, and the purpose of the hearing which has been had was to give it the opportunity to point out the supposed differences.

By the evidence brought forward it was not made to appear that the transportation to Oneida is more expensive than the transportation to St. Paul, and with the great disparity of distance in its favor it may well be assumed to be less. Neither was it shown that there are any special difficulties or peculiar circumstances attending the transportation to Oneida that make delivery of Chicago freights at that point in any respect exceptional; it is not even suggested that such is or may be the fact. We are, on the contrary, left to understand, and must assume in disposing of the case, that so far as concerns the mere handling of freights, their



transportation and delivery is made at the two stations named under circumstances and conditions affecting the cost and the value of the service, which are not substantially dissimilar.

But respondent contends that dissimilar conditions are established at St. Paul to those which exist at Oneida by the action of the Chicago, Burlington and Northern Railroad Company. That company, forming with the Chicago, Burlington and Quincy a through line from Chicago to St. Paul, offers to the public a forty-cent rate between the two cities. This offer is a controlling circumstance in the situation. Respondent must meet this rate or it must abandon the Chicago and St. Paul and Minneapolis business to its rival. No such circumstance controls or affects the rates to Oneida and other intermediate stations. Respondent then calls the attention of the Commission to the fact that in the early case *In re The Louisville and Nashville Railroad Co.*, 1 Int. C. C. Rep., 31, the fact was recognized by the Commission that competition with carriers by water or with other carriers not subject to control under the Act to regulate commerce might make out the dissimilar circumstances and conditions which the Act contemplates; and respondent insists that the competition of carriers which come under the Act, unless it is actually restrained by the Commission must be just as effective in making out the dissimilar circumstances and conditions as would be the competition of carriers which the Commission has no authority to restrain. It is the unrestrained competition, it is said, affecting the longer haul and not the shorter, that makes the conditions dissimilar; and counsel remark upon the fact that neither in the Act itself nor in any of the proceedings or discussions which led to its passage was any distinction taken between the competition of carriers who come under the Act and of those who do not. It is therefore contended that the Commission is not warranted in taking any such distinction.

The argument for the respondent begins with the laying down of the following proposition:

“One of two conclusions must be accepted: either—

“First. One of several competing lines cannot by deliberately making rates which are below the cost of carriage, destructive of all net revenue, destructive of its own property as well as the properties of its rivals, compel its rivals to abandon important competitive business, or adopt over their whole systems such non-productive and destructive rates. Its competitors must be allowed to meet the low rates at terminal competitive points and maintain reasonable local rates, not necessarily lower than through rates.

“Or—

“Second. Any denial of the above conclusion must be placed on the sole grounds that the *competition* is subject to the act of Congress and will be controlled by the Commission. The Commission must take cognizance of such unreasonable and destructive competition, and regulate it under the provision in the first section of the Act, that all charges shall be ‘reasonable and just,’ and every ‘unjust and unreasonable’ charge for such service is *prohibited and declared to be unlawful.*”

Respondent then claims to have shown that the rates made by the Chicago, Burlington and Northern Railroad Company on business between Chicago and St. Paul and Minneapolis are unreasonable and destructively low, and insists, as it did in the opening argument by its president, that the Commission should compel the rival road to establish reasonably remunerative rates in the place of the unreasonably low rates it now makes. The position of the Chicago, Milwaukee and St. Paul Railway Company is shown in the closing paragraphs of the brief filed in its behalf:

“If all the lines were permitted to meet the through rate of the C., B. & N. R’y Co. the purpose of that company in making a through rate lower than any company can willingly adopt for its local intermediate business, and thus monopolizing the through traffic, would be defeated, without subjecting the other companies to disadvantage and loss that is needless and benefits no one. Here is the extraordinary case of a road that has no local business and makes a through rate lower than is fair or remunerative when applied to all

the business of the other roads between the same points for the purpose of monopolizing all the through business. It is therefore unjust to compel the other roads either to forego the through business or to reduce local rates."

Of the fact stated in this brief, that the Chicago, Burlington and Northern is without local business, no proof was given to the Commission, but it is not important in the discussion which follows, and will not be further noticed. The tariffs of that company show that no higher rates are charged to intermediate points than to the terminal stations.

In considering the argument made by the respondent and by the Chicago, Milwaukee and St. Paul Railway Company, it is proper to state in this place that the Commission has never expressed the opinion that the competition of carriers who are under the Act can on no state of facts make out the dissimilar circumstances and conditions which might justify or excuse the greater charge on the shorter haul. The Commission has only gone so far as to say that it must be seldom that such could be the case, thereby recognizing a distinction between the competition of carriers which are and of those which are not subject to the Act, but leaving itself entirely at liberty to consider on its merits any case which might subsequently be presented, and which the parties concerned might think to be specially exceptional. We are therefore prepared to consider this case entirely unembarrassed by what has been said in any other case, and to give such judgment upon it as its peculiar facts may seem to require.

First of all, in taking up the case, we direct attention to the claim advanced on behalf of respondent, that the rates made by the Chicago, Burlington and Northern are unreasonable and unjust, because they are too low to be remunerative, and that they are, therefore, illegal under the Act, which requires all charges to be "reasonable and just," and declares "every unjust and unreasonable charge" to be unlawful.

At the outset it may be pointed out that with entire propriety we might dismiss this claim, with the simple remark

that no complaint of illegality is made against the Chicago, Burlington and Northern, and its rates have not been questioned in any such form or manner as would warrant a judgment upon them. That company is not a party to this proceeding. Its officers have appeared on request to give evidence, and its counsel has filed a brief, as have other counsel representing interests that might indirectly be affected by the action taken, and as any citizen who might suppose he was concerned would be permitted to do. But the only party before the Commission is the respondent, and an order adjudging any other party guilty of illegalities would be inadmissible, because entirely wanting in jurisdiction. The rates of the Chicago, Burlington and Northern are involved in the controversy, but they come in only incidentally. The record presents no issue upon them, and warrants no judgment that would bind the party making them.

But though it is only incidentally that these rates are brought into controversy, yet if any question of law arises upon them which is important to any right of respondent involved in the case, it may be proper for the purposes of a decision upon such question of law that the record, by amendment or otherwise, should be put in such form as to admit of the decision being made. To that end the Chicago, Burlington and Northern Railroad Company might be brought in as a party, and the reasonableness and lawful character of its rates directly put in issue. It is therefore proper to consider now on the record as it stands, whether, if the railroad company just named were a party to the record, the Commission would have the authority to compel an increase in its rates as respondent contends it should do, in case on a record presenting the question they should be found to be unreasonably low.

This question of authority, now for the first time presented to the Commission, is raised upon the express words of the statute which declare that "all charges shall be reasonable and just." To be so the charges ought to be fair to both parties; to the carrier as well as to the party it serves; the rights and interests of both should be considered. There

is consequently no little force in the claim made by respondent that charges are not reasonable and just when they are so low as to be unremunerative to the carrier; so low that its action in continuing to make them would lead directly to bankruptcy. Possibly, if the statute were to be interpreted without any aid from its history, and with no other knowledge of its purposes, aims and ends than such as may be derived from its provisions, a holding that a rate unreasonably low was forbidden might be justified, or at least might be urged upon plausible arguments.

But every statute is to be read in the light of its history and of the evils it was intended to redress. And as matter of public history nothing can be more notorious than that the Act to regulate commerce had for its leading and general purpose, to which other purposes were subordinate, to provide effectual securities that the general public, in making use of the means of railroad transportation provided by law for their service, should have the benefits which the law had undertaken to give, but of which in very many cases it was found the parties entitled to them were deprived by the arbitrary conduct, the favoritism, or the unreasonable exactions of those who managed them. It may be affirmed with entire confidence that the Act was not passed to protect railroad corporations against the misconduct or the mistakes of their officers, or even primarily to protect such corporations against each other. The Act does, indeed, require them to afford reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, but even this requirement was for the public benefit more particularly than for the benefit of the carriers themselves. Everywhere in the Act the primary purpose apparent in its provisions is that individuals dealing in matters of transportation with the carriers regulated by it shall not, in respect to the conveniences the carriers are supposed to offer to the public, be wronged by arbitrary conduct or by favoritism, or be subjected to extortion. It is to this end that the Act declares that all charges made by the carriers it regulates shall be reasonable and just, and the purpose of the declaration is to establish the rule that the charges shall not be extortionate.

If such was the primary purpose of the statute, as unquestionably it was, then the proper meaning of the terms "just and reasonable" as employed in it is apparent. They were employed to establish a maximum limitation for the protection of the public, not a minimum limitation for the protection of reckless carriers against their own action. That a minimum limitation was not in the mind of Congress we may easily satisfy ourselves by considering what would have been the probable fate of any distinct proposition to confer upon the Commission the power which it is now urged to assume. There is not the least reason to suppose that any such proposition would have been seriously entertained in Congress, or that it could have received any considerable support. It would on the other hand, in all probability, have been promptly rejected as wholly unnecessary for the protection of those who had complete powers of protection in their own hands, and as being little short of impertinent intermeddling. If such would have been the fate of the proposition expressed in plain terms, then the conclusion is unavoidable, that the general terms made use of in the statute do not confer the power the proposition would involve. We cannot as a matter of construction deduce from the general terms of a statute a legislative intent which there is no reason to suppose existed in fact, but which on the other hand the circumstances all tend to show was not suggested when the law was under consideration, and if it had been suggested would have been received with no favor.

While confident in this conclusion we shall at the same time concede that in the history of railroad competition the respondent finds abundant evidence that in a great many cases railroad companies temporarily establish rates that are not only below a fair compensation for their services, but are so unreasonably low that if persisted in they must be destructive of their own interests as well as of the interests of rivals. It is upon the basis of this unquestionable fact that respondent contends that if the power thus to sacrifice interests is subject to no restraint at the hands of the Commission, then the distinction made by the Commission in the reported case above referred to, between the carriers who are

and the carriers who are not subject to the Act, cannot be well founded. Unrestrained competition, it is said, is just as damaging and just as powerful in coercing the action of the parties who are subjected to it, when it is the competition of carriers who come under the Act, as when it is not. This is doubtless true.

But we cannot agree, that because the Commission has no authority to require a carrier to increase the rates it has voluntarily established on its line, the competition of carriers who come under the Act to regulate commerce is subject to no more restraint than is that of others. It may perhaps be subject to no restraint directly applied, but many of the requirements of the Act must have an important restraining influence. The obligation all the carriers are under to make to the Commission a complete exhibit of their operations must have at least a conservative tendency, for managers know that if they recklessly engage in destructive competition the fact they have done so can hardly fail to appear in their annual reports. Then a carrier not subject to statutory control may perhaps sacrifice its rates deliberately for a time in the hope that it may thereby crush or cripple a rival, expecting, when that has been accomplished, to advance the rates sufficiently not only to pay for the service rendered, but to recoup the losses it has suffered in the destructive warfare. A carrier which is subject to the Act to regulate commerce cannot do this. When it engages in reckless or unfair warfare, it will understand that nothing which is lost thereby can be made up by exactions from the public which would be inadmissible if no such losses had been suffered. The carrier will understand further that in making exceedingly low rates it is giving the public to understand that those rates are reasonable and remunerative; it is, in effect, saying so to Legislatures and to other public authorities, and thereby doing very much to establish as against itself, a low standard of rates for all time. Moreover, the carrier that declares a forty-cent rate from Chicago to St. Paul is not too low, but is a fair and reasonable compensation for the service performed on its line, is very likely to have demand made for lower rates to intermediate stations; and it is not easy to see



how it would answer the claim that if a forty-cent rate to St. Paul fully pays for the service rendered, the same rate for one-third or two-thirds the distance must more than pay for the service rendered, and therefore be unjust and unlawful. The same section of the Act which forbids the making of the greater charge for the shorter haul expressly declares that it is not to be construed as authorizing the carrier to charge as much for such shorter haul, and when the charge is challenged the carrier must support it by proof that it is reasonable. It assumes the responsibility of doing this in every instance when it makes charges which are alike for distances that greatly vary.

Other requirements of the law operate as restraints to a large extent. The "long and short haul clause" of the fourth section makes reductions to competitive points, when they must be followed by reductions to intermediate points, a much more serious matter to the roads which come under the Act than to others, and the prohibition against raising rates, except upon ten days' notice; the rule that all reductions must be public and free to all, not as formerly they often were by secret arrangements with leading shippers and favored individuals; the proviso that rates made must not work a preference against localities and among business interests, are all important, for the carriers subject to the Act must conform to them in whatever competition they see fit to engage in.

It is unfortunately true that the reckless or unfair competition of one carrier may sometimes compel another, whose management would willingly do its business fairly and at remunerative rates, to retire from some lines of business at competitive points; but the course of conduct which compels this is likely to be temporary, and to be persisted in only until the parties guilty of it are brought to more reasonable action by their losses, or by the interference of stockholders, who are not likely to submit quietly to a permanent drain upon their resources from such a cause.

In all that is now said upon this subject we have in mind only carriers operating in a field of legitimate competition whose business they mutually contend for. A case may be supposed of long circuitous lines formed by a combination

of carriers for the purposes of a competition not justifiable on any business or prudential reasons, but wholly illegitimate. But as no such case is presented by the facts before us, we abstain from any discussion of questions it might present.

For the reasons stated, we think we have no occasion for qualifying in this case the language made use of *In re The Louisville and Nashville Railroad Company*. We think now as we said then that it must be very seldom that the competition of carriers who are subject to the Act to regulate commerce can make out the dissimilar circumstances and conditions which are intended by the fourth section of the Act.

What is there that is specially exceptional in the case before us? Upon what ground can it be claimed that respondent is so peculiarly situated that it may be warranted in making the greater charge upon the shorter haul, because of the competition of carriers subject to the Act, when such competition in general would not justify it? This is the question respondent has been called upon to answer.

The only answer respondent makes is that one of its rivals and competitors is charging between the termini of their respective roads rates so very low that it is impossible to grade down the intermediate rates to the same maximum and at the same time do upon the rates so graded a profitable or even living business. While therefore respondent is compelled to meet the rates of its rival at the termini, it claims that it is at the same time compelled by the great law of self preservation to maintain the higher rates to intermediate stations. The transportation of freights to the termini and to the intermediate stations is for this reason carried on under conditions which differ in vital particulars. Such is the claim made by the respondent.

If the position is a sound one, it must be the existence of the competition rather than the very low rates which makes out the dissimilar circumstances and conditions warranting a departure from the "long and short haul" rule of the statute. The fact that the rival road makes rates which are very low is important only as it enables it to obtain the business; and as this is the object for which they are made so low, it

may be assumed that the competitors in any case will yield in rates at the competitive point to any extent they may deem necessary to that end, unless some controlling reason of policy or of law renders an abandonment of the competitive business preferable. If respondent is right in its views of the law, then it must be perfectly lawful for the carriers of the country at every point of contact or of competition to give rates which pay to such points the bare cost of movement, and then draw their profits exclusively from the higher rates which they impose upon intermediate stations. The Chicago, Burlington and Northern can at pleasure establish for all its competitors at St. Paul and Minneapolis the dissimilar circumstances and conditions which entitle them to levy greater rates for a transportation of two hundred miles than are charged for more than twice the distance, and these extraordinary differences in rates between the towns on all the roads in the northwest will thereby be legalized.

If this is a correct view of the law then it must be admitted that one of the leading purposes of the Act to regulate commerce is very easily and may be very generally defeated. It was unquestionably one of the chief purposes of the Act to preclude the giving of such unreasonable preferences and advantages to particular localities as had been gross and flagrant in many cases before its passage. The third section of the Act expressly forbids and makes unlawful any such preferences. Now, no one can question that to charge on a consignment of goods from Chicago to St. Paul but 74 per centum of the charge upon a precisely similar consignment from Chicago to Oneida, one-half the distance, is to give a preference to the one town which *prima facie* at least is unjust to the other; and if *prima facie* unjust it is also *prima facie* undue and unreasonable.

The respondent does not deny the apparent injustice, but contends that the rate from Chicago to St. Paul is unreasonably and unjustly low, made so under compulsion, and only because the perverse and unreasonable course of the Chicago, Burlington and Northern renders it unavoidable. The charge made to Oneida on the other hand is claimed not to be too high; it is no more than a fair compensation for the service

rendered ; it is perfectly reasonable in and of itself ; it is a fair rate, and therefore fault cannot justly be found with it by the people who pay it. It is no injustice to charge the people at Oneida fair rates, and no undue preference of another place where the charging of fair rates by reason of the competition is out of the question. This is the contention on which the rates are sought to be supported.

On the hearing the president of the respondent and other witnesses produced were asked to give a definition of fair rates ; to state the elements that were to be taken into account in determining what fair rates should be. The inquiries did not elicit very satisfactory responses ; witnesses were very free to say that the forty-cent rate Chicago to St. Paul and Minneapolis was unreasonably low, but they were not prepared to give the Commission much aid in determining what a reasonable rate should be.

The Commission is of the opinion that the phrase "rates reasonable in and of themselves," which is often made use of in similar cases to the present, is very likely to be misleading. It is a phrase which seems to imply that the particular rates may be considered by themselves as if they were and could be affected by no others ; and applying the phrase to the Oneida rates, that their reasonableness was to be determined without taking any others into account. But it is not the theory of the Act to regulate commerce that the reasonableness of rates can thus be separately and independently determined. On the contrary, it is assumed in the Act that persons, corporations, and localities are interested not only in the rates charged to them but in the rates which are charged to others also ; and while the Act does not require all rates to be proportional, it nevertheless makes the element of proportion an important one when the rates for any locality are to be determined. No rates can therefore be reasonable in and of themselves within the contemplation of the Act which are made regardless of proportion. A fifty-four-cent rate, Chicago to Oneida, may be perfectly just and reasonable "in and of itself" when the St. Paul rate is sixty cents, but be plainly unjust and unreasonable when the St. Paul rate is reduced to forty cents. When the St. Paul rate

is reduced a new element is brought into the consideration of the Oneida rate—an element that must certainly have some influence; it cannot be ignored altogether as it has been in this instance. On this point we refer to what is said in *Boards of Trade Union, etc., v. The Chicago, Milwaukee and St. Paul Railway Co.*, 1 Int. C. C. Rep. 215, and *Raymond v. Same Defendant*, *ibid.* 230, where relative rates were somewhat considered. We do not think, as the case stands before us, that the Oneida rates appear to be "in and of themselves" in any legal sense fair rates. The disparity between them and the rates for the greater distance makes them *prima facie* unjust and unreasonable.

But neither do we think that within the contemplation of the Act to regulate commerce respondent has shown that the transportation to Oneida is under dissimilar circumstances and conditions to the transportation to its northern termini. The showing is merely that a perverse rival makes unreasonably low rates to such termini. But if this makes out the dissimilar circumstances and conditions intended by the Act, then any one railroad manager in the northwest may at pleasure, by a foolish or a perverse tariff sheet, give to one or more points of railroad competition a preference and advantage over all others, which would defeat one of the leading purposes had in view in adopting the Act. The Act itself would, therefore, as to one of its leading purposes, be dependent on the will of any single railroad manager who from policy or perversity may see fit to nullify it.

It may be quite true, as respondent contends, that unless other carriers are suffered to meet the competition of a rival at an important point without reducing intermediate rates, they will suffer unreasonably, perhaps destructively in their resources. But this question is not to be decided on the interest of the carriers only; the communities which the Act undertakes to protect are to be regarded also. The Act has doubtless conferred upon the Commission a greater power to protect localities against the carriers than it has to protect the carriers against themselves or against each other. It was probably thought in Congress that with the liberty of action left to the carriers they would not needlessly rush to

**destruction.** The assumption may not prove to be well founded ; but nothing seems plainer than that under the law as it stands the protection of carriers against destructive rivalry, and rates that lead directly to bankruptcy, must be found chiefly in prudent management, in the cultivation of reasonable relations among themselves, in mutual forbearance and the application of a sense of justice to their mutual dealings and in their rivalries. If they deliberately proceed to destroy each other, the law must take care that in doing so they injure as little as possible individuals and communities dependent upon them for transportation facilities.

The proceedings on the hearing of this case showed a want of harmony among railroad managers that is lamentable because it is every way harmful. It is harmful most particularly to railroad property, but it is harmful to the general public also, because it produces a general unsettling of rates. Every change in rates affects values ; it disturbs trade and alters to some extent the value of contracts. The general public is therefore interested in rates being steady ; and a cut in rates for a time, of which a few vigilant dealers may take advantage, may when all its effects are taken into consideration be found to be more harmful than beneficial. But if the benefits for the time are undoubted, a cut below living rates followed by an advance is always likely to beget a sense of wrong in the community, which will do much to establish and perpetuate a prejudice against railway management. And a prejudice thus created is not directed solely against the party who may be responsible for the action ; it extends to the whole body of railway managers. The public regards them as a class, and perhaps in its legislation punishes the class for the misbehavior of individuals. This is a fact which cannot be ignored, and it is one which ought to have more influence in restraining mischievous railroad contentions than it seems to have had hitherto.

The effect of the doctrine contended for on the part of respondent is that the railroad companies, if they please to do so, may at will build up a single point in the northwest to a preponderating and conclusive ascendancy at the expense of all others. Giving it rates which in proportion are less than



half what other localities must pay, may fix that ascendancy with little regard to natural or other advantages. Oneida, if its natural advantages were equal to those of St. Paul, would be doomed to perpetual obscurity if it must begin its rivalry with such enormous difference in rates as respondent has now established. This is very plain.

The Act to regulate commerce in the interest of justice and relative fair dealing forbids the charging on transportation from Chicago to Oneida of higher rates than are charged from Chicago to St. Paul and Minneapolis, the greater distance, unless the carriage to the one place is under dissimilar circumstances and conditions to those which attend the carriage to the others. Nobody points out any dissimilar circumstances or conditions except that at one place there is railroad competition and at the other there is not. If this fact of competition makes out the dissimilar circumstances and conditions intended by the statute, then the laying down of the general rule prescribed by the fourth section was an absurdity. As is said above, a railroad manager may disregard it at pleasure, and his doing so is warrant for every competitor to follow the example. But the competitors need no example; they have the same right to begin the cut that they have to follow it. Respondent may at pleasure, if its position is sound, charge more to Gretna, 20 miles, than to Dubuque, ten times as far, because at the latter place it has competition and at the former not.

But this would not be the sort of fair dealing and justice as between localities which the Act to regulate commerce seeks to establish. It is very true, as was said on respondent's behalf, that that Act intended to preserve competition, not to annihilate it; but it did not intend that competition should be allowed to run riot to the destruction of business interests or of localities. Competition formerly prospered very largely on rebates and personal preferences which are now forbidden; but forbidding these is not supposed to put upon competition any improper restraint, or any that is not perfectly consistent with reason. So competition also prospered on favoring the large towns at the expense of the small; the "long and short haul clause" of the fourth section of the



Act regulates this in the interest of relative justice. It does not preclude competition, but seeks to keep it within something like reasonable bounds. Respondent may reduce its rates as much as it pleases at terminal stations, but it must do so subject to the rule which the statute prescribes, that at intermediate stations they shall be in the aggregate no higher, and shall also be reasonable and just. Nothing short of this can prevent the reductions at the termini being harmful to all stations which do not share in them.

It is not unlikely that this conclusion may to some extent work a hardship to respondent in view of the excessive competition to which it is now exposed. If so it is to be regretted; but it is neither lawful nor just that respondent shall relieve the hardship to itself by imposing excessive rates upon the people at its local stations. That is what it is now doing. The rates to local stations are excessive because they are greater than to the termini, and the statute does not under the circumstances admit of their being so; but they are unjust also. The relative inequality makes them unjust, because it puts all business at the local stations at a great and unreasonable disadvantage, as compared to the business at the terminal stations which are given rates that are so much more favorable.

The Commission feels the full force of what is said on behalf of respondent, that an enforced modification of its rates will affect all rates in the Northwest, and will result in a great many inequalities and work much injustice. To some extent unquestionably this is true. Regarding these results it may be said:

*First.* They are results that are unavoidable, because they follow from the necessary conformity of respondent's action to the rule the statute prescribes. The Commission does not make the law; it simply calls upon respondent to observe it.

*Second.* The statutory rule is intended to be general, though admitting of exceptions. The more general it can be made the more just will it be. Every exception has an appearance of injustice, and is therefore to be avoided if possible. To

the man who is not an expert it always seems wrong that more should be charged for the transportation of the same sort of merchandise for the shorter than for the longer distance over the same line in the same direction, and it is sound policy in railroad managers to limit the cases as much as possible in which it will be done. But the position taken by the respondent converts the exception into the rule. There is competition at every important point in the country, and at thousands of unimportant points as well. At every one of these if the position of respondent is sound each competing railroad manager by his zeal for business, or perhaps by less worthy motives, will create for his competitor the dissimilar circumstances and conditions which entitle him to disregard the general rule which the statute has prescribed in the interest of justice. We cannot accept this construction of the provision in question, for the reason already stated, that we think that in effect it nullifies it.

*Third.* However great and numerous may be the inequalities, which as respondent contends, are likely to result from a rigid application on its line of the general rule of the "long and short haul" clause, it is not, in our opinion, at all probable that they will exceed, either in number or extent, those which now exist under the violent competition which prevails in the Northwest. The exact opposite ought to be the case, and there is every reason to believe it will be when the rule of the statute is accepted as imperative, and railroad managers in good faith and with mutual forbearance apply themselves to the task of making it as little harmful as possible.

The Commission therefore finds and adjudges that the transportation of freights by respondent upon its road from Chicago to St. Paul, Minneapolis, and Minnesota Transfer, and from such northern termini to Chicago, is made under substantially similar circumstances and conditions to those under which like freights are transported on the same line from the same initial point or points in the same direction to intermediate stations, and such being the case, that the

greater charges which respondent makes to such intermediate stations are illegal, and order will be entered that respondent cease and desist from making such illegal charges.

Commissioner Schoonmaker reserves any expression of opinion on the question discussed, of the power of the Commission to order the correction of a rate unjust and unreasonable because manifestly too low for the safe and proper conduct of the business, or otherwise in contravention of law.

**NATHANIEL W. HOWELL, HIRAM A. POOLER, CHARLES M. THOMPSON, CORNELIUS B. WOOD, AND A. T. MOSHIER, AS A COMMITTEE OF THE FARMERS AND MILK-PRODUCERS OF ORANGE COUNTY, NEW YORK, v. THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD CO., THE NEW YORK, ONTARIO AND WESTERN RAILWAY CO., THE NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD CO., AND THE LEHIGH AND HUDSON RIVER RAILWAY CO.**

Complaint filed April 23, 1887.—Answers filed June 2, 1887.—Assigned for Trial and Hearing commenced July 13, 1887.—Hearing continued October 13, 1887.—Filing of Briefs and Arguments completed May 13, 1888.—Decided September 24, 1888.

A question of reasonable rates cannot be properly decided without full knowledge of all the facts concerning the particular traffic in question, and its relations to the other traffic of the carrier. Some of the elements stated which are necessary and proper to be considered.

Proof that certain rates are very profitable to the road, and that they are higher than the rates charged on certain other somewhat similar commodities, is not of itself a sufficient ground for determining either that such rates are unjust, or what rates would be just and reasonable for the traffic in question.

Case retained for further showing upon the question of the reasonableness of the rates charged for transportation of milk and cream from producing points to Jersey City.

Grouped rates not peculiar to milk traffic. Other instances stated and distinguished.

Transportation of milk an exceedingly peculiar kind of traffic. Time of the first importance. Arrangements stated by means of which the delivery of a regular daily supply to all consumers in large cities is accomplished. The elements of extra expense are substantially the same upon milk transported from every part of the line of road over which the special milk train runs.

Grouping of milk rates over large extent of territory not shown to injuriously affect the producers who complain; their product is not reduced in value, nor is any part of it left unsold, while the requirements of consumers demand a steadily increasing area of supply.

Prejudice and advantage become undue and unreasonable when the results are such as to effect some tangible injury to the complaining party. Without some proof of damage resulting to complainants, an advantage in rates as related to distance is not necessarily undue or unreasonable, no substantial difference in expense appearing to exist.

The existing arrangement by which the same rate is charged for the transportation of milk from all points reached by the regular daily milk trains of the defendant roads found to be not illegal, and on the whole to be the best system that can be devised for the general good of all interested parties.

A considerable additional expense, such as is involved in the collection of milk beyond the end of the route of the milk train, is a fact in consideration of which a somewhat higher rate would be just, and is perhaps necessary, in order to properly equalize the proportionate privileges of the traffic.

*Henry Bacon*, for Complainants.

*James A. Buchanan*, for New York, Lake Erie and Western Railway Co.

*John B. Kerr*, for New York, Ontario and Western Railway Co.

*John W. Taylor*, for New York, Susquehanna and Western Railroad Co.

*Nathaniel J. Beattie*, for Lehigh and Hudson River Railroad Co.

#### REPORT AND OPINION OF THE COMMISSION.

WALKER, *Commissioner* :

The petition in the case presents two questions :

*First.* Is the rate which is charged for the transportation of milk from points in Orange county in the State of New York, to Jersey City in the State of New Jersey, a just and reasonable rate ?

*Second.* Is the practice of making a uniform milk rate from all stations upon the defendant lines, without regard to distance from Jersey City, in contravention of the provisions of the Act to regulate commerce ?

The answers justify both the reasonableness of the rate and the principle by which the whole milk route of each road is grouped under an identical tariff rate.

The facts which are found to be established by the proofs, so far as they are considered pertinent to the issues, are as follows :

A meeting, which was attended by two hundred or more farmers and milk-producers residing in Orange county, New York, appointed the complainants a committee to present a petition to this Commission for the purpose of endeavoring to obtain a "less tariff rate," and a "different method of charging freight," in respect to the transportation to the New York market of milk produced in said locality.

The New York, Lake Erie and Western railroad extends from Buffalo to New York city, passing through Orange county, and carries the greater part of the milk there produced. It also transports from Greycourt, in said county, to Jersey City milk, which is collected along the line of the Lehigh and Hudson River railroad, which runs in a northeasterly direction 62 miles from Belvidere, New Jersey, to said Greycourt. Said Erie Company also carries milk to Jersey City from points on its line more distant than its Orange county stations, and from other points less distant than said stations. The nearest point is Ridgewood, in New Jersey, 21 miles from Jersey City; the most distant is Summit, in New York, 183 miles from Jersey City. The milk stations in Orange county on the Erie road extend a distance of from 31 miles to 87 miles from Jersey City, and include stations upon branches as well as upon the main line. Greycourt is 53 miles from Jersey City; the route of the Lehigh and Hudson River railroad lies in Orange county for about 13 miles, the rest of it being in New Jersey.

The New York, Ontario and Western railroad collects milk at various points along its line in the counties of Orange, Sullivan and Delaware; from Sidney, distant 202 miles from Jersey City, to Orr's Mills, distant 56 miles therefrom. The Orange county points extend a distance of 28 miles westerly from Orr's Mills, or 84 miles in all from Jersey City. The route of this line to New York is over the West Shore road from Cornwall-on-the-Hudson.

The main line of the New York, Susquehanna and Western railroad does not pass through the State of New York, but a branch or spur thereof extends north from Two Bridges, New Jersey, to Middletown, in said Orange county, New York, upon which milk is collected at a few stations in said county,

distant 74 to 87 miles from Jersey City. Said road also collects milk in the State of New Jersey at various points from 29 to 84 miles from Jersey City.

Upon all said roads milk and cream are carried in cans holding 40 quarts each, which weigh when filled 100 pounds, and when empty 20 pounds. The rate to Jersey City is uniform, being for milk 35 cents per can, and for cream 45 cents per can, from all of said points, including the return of the empty cans.

Upon reaching Jersey City the milk is delivered by the carriers to the various dealers to whom it is consigned, who receive it in wagons and transport it across the ferry to the city of New York, where they distribute it to the consumers. These dealers, through an organization called the "Milk Exchange, Limited," establish from time to time a price upon all milk coming to New York City, which is paid to the producers, less the freight. For example, at the time of the hearing the price paid was in accordance with a resolution of said Milk Exchange, as follows:

"NEW YORK, *Sept.* 23, 1887.

"At a meeting of the Milk Exchange, Limited, held this day, it was *Resolved*, That on and after October 1, 1887, and until otherwise ordered, the market price of milk be four cents per quart, less the railroad charges from each respective producer's shipping point, together with an allowance of five cents per can of forty quarts when the milk is delivered on the west side of the Hudson river."

Under this arrangement Orange county milk is subject all the year round to a deduction from the standard price amounting to 35 cents per can freight, and 5 cents per can ferriage, being 40 cents per can in all, or 1 cent per quart; so that when the established dealers' price is 4 cents per quart, the producers who ship by the defendant roads receive 3 cents per quart for their milk. The actual ferry charge paid by the dealers is a certain sum per one or two horse wagon, as the case may be, which averages about 1 cent per can to the railroad companies owning the ferry boats. The remaining 4 cents per can appears to be retained by the deal-



ers in consideration of the service of transporting the milk across the Hudson river in said wagons and returning the empty cans to the depot in Jersey City.

The only rate here in question is the railroad tariff of 35 cents per can, or 8 $\frac{3}{4}$  mills per quart, from the various shipping points in Orange county to Jersey City, including the return of the empties. The price which the dealers receive for said milk delivered to the consumers varies from 4 to 8 cents per quart, and sometimes 10 cents; the largest sum being considered as the regular price, but reductions being made by each dealer to individual customers, as is found to be required to secure their business.

The milk delivered by said four roads in September, 1887, was as follows, respectively, viz:

New York, Lake Erie and Western.....	120,805 cans
New York, Ontario and Western.....	42,467 cans
New York, Susquehanna and Western.....	40,907 cans
<hr/>	
In all.....	204,179 cans

out of a total of 457,855 cans delivered by all routes supplying the New York markets. The Lehigh and Hudson river delivers about 27,000 cans per month to the Erie at Greycourt, which is included in the above statement of receipts from the latter road.

The milk traffic of the New York, Lake Erie and Western, commonly called the Erie railroad, is handled as follows: Two milk trains are run, which double the road daily. One starts from Port Jervis at 5.30 p. m., reaching Jersey City at 11.08 p. m., returning the following forenoon. The distance covered is 87 miles in each direction. The train is usually composed of two refrigerator cars which are brought to Port Jervis from the Delaware Division upon a mixed train, from Summit and Deposit, respectively, and of other refrigerator and ordinary milk cars which are put into the train at Port Jervis, Otisville, Middletown, and Goshen, and from short branches connecting with the main line at Middletown and at Goshen. The other milk train starts from Pine Island, the terminus of the Pine Island branch, at 5.45 p. m., coming

upon the main line at Goshen, and arriving at Jersey City at 11.56 p. m. This train also returns in the morning of the following day, the distance being 71 miles in each direction. It hauls refrigerator and milk cars taken up at Pine Island, Florida, Monroe, Turner's, Oxford, Washingtonville, and Newburgh, together with seven refrigerator cars delivered by the Lehigh and Hudson road at Greycourt. The first train usually hauls 13 and the second 15 milk and refrigerator cars. Passenger cars are attached to both trains and passengers are carried to and from all local stations. The service is daily, including Sundays. The trains stop at all points where milk is received, including several platforms between the regular stations. No freight is carried except milk, cream and pot cheese. If ice is required it is furnished by the shippers. In winter the cars are warmed by the carrier. Two hundred cans constitute a car-load, covering the entire floor space of the car, as well when empty as when filled with milk. Upon the return trip the cans are distributed and the cars left along the line in the same manner as they are taken up in the other direction. The equipment of the Erie road employed in this service, in addition to the 7 refrigerator cars of the Lehigh and Hudson, comprises 9 refrigerator cars and 18 milk cars, costing respectively about \$1,500 and \$1,200 each. All said cars are equipped similarly to passenger trains, with passenger trucks, patent couplings and air-brakes. A large number of stops are made and the running time between stations is much faster than that of freight trains. The trains are scheduled with the passenger trains and are required to make their time without fail, for the reason that if the milk reaches Jersey City after midnight it occasions complaint, and if delayed much beyond that hour the milk is sacrificed. It is "time freight," and must be in the hands of the dealers for early morning distribution throughout the cities of New York and Brooklyn.

The business of receipting for the cans to individual shippers, delivering them to the various dealers to whom they are consigned, receiving and counting the cans, and distributing them at the proper stations, involves much care and

attention in order to insure accuracy, while it must necessarily be done rapidly; it requires the services of a large number of extra men, not only on the trains, but at the Jersey City station. A man accompanies nearly every car for this purpose; the crew of the train usually consists of a conductor and 12 men, besides the engineer and fireman; the ordinary freight train crew is a conductor and three brakemen. Two crews are required for each milk train, in alternate service. The labor upon each milk train, back of the engine, costs \$49.20 per day for the two crews. The force of clerks and helpers employed at Jersey City upon this special business costs \$25.93 per night. The ferry boats of the line are kept running all night, principally to accommodate this traffic. At Jersey City a large part of the terminal tracks, grounds and buildings have been devoted to this business exclusively. The several roads unite in employing a man to trace and return missing cans, at a salary of \$50 per month.

The methods employed by the other defendants in conducting their milk business are substantially the same as those in use upon the Erie road. The New York, Ontario and Western uses refrigerator cars exclusively and supplies ice in summer. The milk train runs from Sidney and return, 202 miles each way daily, and milk is brought from New Berlin, 22 miles beyond Sidney. The average distance that the milk is carried on this road is 135 miles, about 75 per cent. of it coming from points beyond Orange county. Besides milk, cream and pot cheese, the train also carries fresh butter and fresh meat in baskets.

The New York, Susquehanna and Western has no refrigerator cars. The expense of its milk train for wages only is \$45.70 per day. The total expense of the train, including coal, oil, wear and tear, etc., is computed at \$141.65 for the round trip. The cost of an ordinary freight train for the same trip is computed on the same basis at \$106.25. The milk train on this road also carries fresh meat, butter, and eggs, together with berries and fruit in their season. The longest haul on the main line in New Jersey is 84 miles.

The milk train on the Lehigh and Hudson River railroad

also carries fresh meat and fruit, the total distance from Belvidere *via* Greycourt to Jersey City being 116 miles.

The rate of freight to Jersey City and the average net price paid to the producers for milk for several years last past are shown in the following table :

Year.	Average price per quart.	Freight per can of 40 quarts.
1877.....	.0315	.55
1878.....	.0251	.55
1879.....	.0233	.40 from May 1.
1880.....	.0285	.40
1881.....	.0298	.40
1882.....	.0325	.40
1883.....	.0315	.40
1884.....	.0304	.275
1885.....	.0279	.32 from Feb'y 1.
1886.....	.0294	.35 from Feb'y 1.
1887.....	.03 nearly	.35

The yearly consumption of milk in the New York market has meanwhile steadily increased, and the various roads which were able to do so have from time to time extended their milk routes further into the interior.

The gross yearly earnings of the milk trains on the defendant roads are approximately shown in the following table. The data from which it was prepared include the earnings upon the first day of each month during the period from July, 1886, to June, 1887, upon milk and cream shipped from every station upon said roads; also upon other freight carried upon said trains. The Erie road, in May, 1887, discontinued the carriage of other freight on its milk trains in order to avoid delays. The passenger earnings given upon the New York, Ontario and Western and the Lehigh and Hudson River roads are actual receipts for one year; upon the other roads, estimated.

	Milk & Cream.	Other freight.	Passengers.	Total.
N. Y. L. E. & W.....	\$474,609 50	\$7,362 60	\$47,366 85	\$529,308 95
N. Y. Ont. & W .....	187,057 97	1,978 80	12,941 24	201,978 01
N. Y. Sus. & W.....	178,494 50	3,860 27	13,842 62	196,197 39
L. & H. R.....	40,659 63	.....	6,984 75	47,644 38

The receipts of the latter road from cream and from other

freight were not furnished. Probably about \$5,000 should be added, which would make the gross yearly earnings of its milk train \$52,644.38.

The cost of handling the milk business of the defendant roads was not shown. The expense of the train service upon the New York, Susquehanna and Western was estimated at \$141.65 per day, as above stated, or \$51,502.25 per year, but no statement was made in respect to the station and terminal expenses. The extra cost of labor upon the Erie road in running the trains above the cost of ordinary trains was carefully proved, together with the cost of extra labor at Jersey City, but the ordinary cost of train, station, or terminal service was not given. No proof whatever was made in respect to the cost of the traffic upon the two other roads.

The net profit of the carriage cannot therefore be stated, nor even approximated with any satisfactory accuracy. The business, however, is evidently exceedingly valuable to the carriers, the gross earnings per car upon the Erie road amounting to about \$42 per day, for the entire number of milk cars owned by that company, on every day in the year. The receipts per car in each trip, carrying 200 cans at 35 cents per can, are \$70. Cars engaged in this business carry about ten tons each in one direction, and about two tons each in the other direction. Taking into account the return of the empty cans, the rate per hundred pounds charged upon milk shipments is about 29 1-6 cents.

The tariff rates upon certain other commodities upon each of the defendant roads were put in evidence. The articles selected were fresh meats, berries, butter and eggs, which are carried to a certain extent upon milk trains. The rates made upon said articles are very diverse, their transportation in car-loads and in less than car-loads, as well as at carriers' or owners' risk, being distinguished by important differences in the charges made. When said articles are shipped upon the milk trains in less than car-load lots and at the carrier's risk, their transportation bears some analogy to that of milk, although the danger of loss from delay is less, there is no special urgency in the return of empty packages, and the articles named can be economically carried by load-

ing them upon the tops of the cans of milk, after the entire floor space of the cars is filled with the latter product, for which the train is primarily intended.

Upon the Erie road the rates per hundred pounds from the several milk-route stations to Jersey City are as follows, varying according to distance:

Fresh meat and berries.....	13 to 33 cents.
Butter and eggs .....	10 to 28 cents.
Egg cases, returning .....	7 to 17 cents.

Empty berry crates returned free. Other packages returning are charged freight, but the rate was not stated.

Upon the New York, Ontario and Western the rates are as follows: fresh meat, 30 to 60 cents; fresh butter, 20 to 45 cents (both on milk train, released); on other trains, meat and berries, 16 to 32 cents; butter and eggs, 14 to 27 cents. Returning packages, berry crates, butter pails and egg crates, 9 to 22 cents.

Upon the New York, Susquehanna and Western on Monday and Thursday, called produce nights, the rates are as follows: fresh meat and berries, 14 to 22 cents; butter and eggs, 11 to 19 cents. Meat baskets, butter packages and egg crates returned free on produce nights, wholly at owner's risk and not manifested.

Upon the Lehigh and Hudson the rates are as follows: fresh meat and berries, 26 to 36 cents; butter and eggs, 22 to 30 cents. Packages returned free in milk cars; otherwise at the rate of 14 to 18 cents per hundred pounds; minimum charge, 50 cents.

The Orange county rates are as follows:

	Fresh meat and berries.	Butter and eggs.	Returning packages.
N. Y., L. E. & W....	.13 to .25	.10 to .22	.07 to .14 (egg cases).
N. Y., Ont. & W.....	.16 to .20	.13 to .17	.09 to .10.
N. Y., Sus. & W.....	.20	.17	Free on produce nights.
L. & H.....	.26 to .30	.22 to .25	Free in milk cars.

#### CONCLUSIONS.

1. It is obvious that the data furnished upon the question of whether the rate complained of is just and reasonable are



exceedingly meager. The question of the reasonableness of rates is always a perplexing one. A great variety of considerations are necessarily involved in each instance. Theory and conjecture merely are not enough. A comparison of one isolated rate with another is not sufficient. The whole field must be considered in order to approximate justice, and at best the result cannot be regarded as other than an approximation.

In the present case the proofs show the volume of the business in question and the way in which it is transacted; the distances traversed and the various extraordinary expenses involved; the rates charged upon milk and cream, together with the rates charged upon four other articles of traffic. The passenger fares in force upon the defendant roads were also put in evidence, but no important relation between them and the milk rates is perceived.

In order to arrive at a just understanding and determination of the question presented, many other lines of evidence and of comparison would be admissible, in respect to which the case is wholly barren; some of them are of great importance. For example, the volume of the traffic affords little light upon the question, without some knowledge of the total volume of traffic of the defendant roads respectively, and of the expense of working the traffic as a whole; the relation which the milk business has to the other business of the roads in extent, cost and profit; the amount of net earnings of the properties, with the operating expenses, fixed charges and capitalization. The daily earnings per car of the milk trains upon some of the defendant roads may be deduced from the proofs, but nothing whatever is shown of the earnings of other cars in other branches of service. It is claimed that the profits of the business to the carriers are large as compared with the net results of other kinds of traffic, but what the latter may be are altogether unknown, nor is there any attempt to show what is a just measure of profit in railroad transportation. Even the cost of the running of the milk trains and of the delivery, collection and returning of the cans is left wholly undetermined; the expenses of maintenance of way, structures and equipment, and the fixed



charges of the roads, to which this business should contribute its fair proportion, are not even alluded to. Some light might be thrown upon the question by evidence of what is charged by other carriers in other localities for like services rendered, but nothing of the sort is adduced. The course of the business in respect to rates of freight and prices of milk for a term of years is in evidence, but the result is such that no relation between them can be seen; when the freight charges have been reduced the producers have not apparently profited comparatively, although the method of settlement now in vogue would seemingly give them the benefit of any reduction in the cost of transportation; the experience of the past tends to show that the market price of the product is to a great extent controlled by other considerations. There was no evidence to show the cost of milk to the producer, or how much profit above the cost of production the business yields, or how the producers' profit corresponds with the carrier's profit. No evidence was given which points to any injurious effect upon the agricultural interests of the territory west of the Hudson river resulting from an exorbitant milk tariff. It does not appear that the farmers of that locality suffer any burdens as compared with those who reside upon other lines of road supplying the same market, or that the net price which they realize for their milk is not fair, and one which affords them a reasonable profit. The rates charged upon the New York and Harlem, Long Island, New York and Northern and other New York roads are not produced; and as most of the other roads which supply the New York markets are not interstate roads, their milk tariffs are not accessible to the Commission. The same is true in respect to milk rates quite generally at other large cities, and no proof thereof has been presented.

It might be possible for the Commission, of its own motion, to institute an inquiry into some of the foregoing questions, all of which and others that might be named, are among the considerations, the average result of which, in their totality, produces conviction upon the question of whether a given rate is or is not just and reasonable. It would hardly be proper, however, in disposing of an impor-

tant question like this, for triers of fact to cast about for evidence upon which to base a decision, without affording opportunity for the carriers to make all proper explanation, and to call attention to any proper distinguishing characteristics of their traffic and its conditions. Especially in this instance, where the complainants' case was presented with great deliberation, it would be out of place for the Commission to assume that the facts submitted failed to present the entire ground upon which the petitioners' claim for relief was based.

The brief filed on their behalf rests this branch of their case upon the following line of reasoning:

"That the rate charged, being beyond what is charged by the same companies for the transportation of any other inanimate freight, it is impossible to escape the conclusion that as the rates under their tariffs for other articles must be assumed to be just and reasonable because otherwise they would be unlawful, it is entirely obvious from the comparison furnished by the petitioners themselves that these rates are unjust and unreasonable."

It is not apparent how an assumption that any other given rates must be reasonable is not equally applicable to the milk rate; and it is not difficult to perceive that a rate may fail to afford a fair basis of comparison because it is in fact less than what would be a reasonable rate, if considerations of expense alone governed, wholly disconnected from competitive circumstances and other conditions of the traffic. Passing by those suggestions, however, the comparison proposed is between the rate charged upon milk and that charged for the transportation of "any other inanimate freight." Such a comparison might be of use, although not necessarily controlling, because there must be some one article upon which the highest rate charged upon any article may properly be made, and it cannot be assumed that milk may not be that very one. Only four articles, however, have been presented, out of the vast number of subjects of transportation over the defendant roads. The articles named are those which in some respects are similar to milk in the circumstances of

their transportation; in other respects they are quite different, and the disparity of rates between them is by no means so remarkable as to lead to any necessary conclusion of injustice. In fact, the figures above given show that on some of these very scheduled articles, at several of the points where milk is collected, the milk rate is the lowest; and the variations in the figures, as well as in the circumstances of the traffic, are so great that no such conclusion as is claimed can be legitimately drawn.

It is further said that the charges upon milk and cream of 35 and 45 cents, respectively, for the same sized can, cannot both be reasonable; but the element of value in the commodity transported forms a proper consideration to be taken into the account in the establishment of a rate. The liability of a carrier as an insurer of freight against all loss except such as is occasioned by the act of God or of the public enemy is elementary, and the greater the value the greater the risk.

It is further suggested that the business of transporting milk is extremely profitable; it seems to be thought that this reason without more would justify the Commission in ordering a reduction of the rate. But it is not shown how profitable this traffic in fact is, nor is there any guide as to what, in the apprehension of the petitioners, would be a reasonable profit for the carriers; it is evident that at present rates the farmers of Orange county are very largely engaged in an industry which would be impossible without the co-operation of the roads; for the service of transportation they pay about 25 per cent. of the value of the milk when laid down in New York city. As the matter now stands, no necessary deduction follows that the profit of the carriers is exorbitant, or what would be a reasonable sum for the carriers to charge in case the present rate was found excessive.

It is apparently assumed by complainants that a *prima facie* case is made out by showing that the rates in question are higher in certain cases than certain other rates, and that they produce a large profit to the carriers. Such is not the understanding of the Commission. When a question of reasonable rates is presented the whole subject should be laid

open, with all the attending circumstances and relations. While upon the facts as they now appear there seems to be considerable foundation for the claim that the rate in question is too high, at least upon some of the defendant roads, nevertheless it would be unreasonable and unjust for the Commission to pass upon a question involving such important rights without full information upon the entire subject involved. See Annual Report of the Interstate Commerce Commission, 1 I. C. C. Rep., 313; *Evans v. Oregon Railway & Navigation Co.*, *ib.*, 336.

2. The other question, in respect to the practice of making a uniform milk rate from all stations upon all the defendant roads, is very thoroughly presented in the proofs and the arguments. The petitioners evidently feel that it constitutes a substantial grievance. In fact this proceeding, as the case has been presented, is principally an attempt by them to secure what they denominate "a different method of charging freight," meaning a system of rates which shall be either framed upon a progressive mileage basis, or much less widely grouped. Their claim is based upon the third section of the Act to regulate commerce, which forbids the giving of any undue or unreasonable preference or advantage to any particular person, locality, etc., and the subjection of any particular person, locality, etc., to any undue or unreasonable prejudice or disadvantage in any respect whatever. Their argument is tersely stated as follows: "Undue advantage to the one and undue prejudice to the other is just as great when the difference is made in the increased amount of the service rendered for the same price as it is when the difference is made in the increased price charged for the same amount of service." And the particular discrimination complained of is summarized in the statement that the Erie road, irrespective of the length of the haul, charges residents of a locality 183 miles from Jersey City the same price for the transportation of milk that it charges those of another locality only 21 miles from the common terminal.

This method of arranging freight rates, technically known as the grouping of rates, has been long practiced by carriers; various grounds of justification have been assigned, accord-

ing to the different conditions which in each case have called it into operation.

Under ordinary circumstances it is apparently against the carrier's interest so to group its charges. Upon a wholly independent line of road disconnected from any competitive surroundings, and able to fix its tariff upon rigid principles, it is probable that a mileage basis would be quite strictly adhered to, for the purpose of obtaining a fair remuneration upon short-distance traffic and an increasingly larger sum at more distant points, thus producing the greatest possible revenue in each instance. Yet upon lines like this most simple example, occasions have arisen when the competition of business interests, as urgent in its stress and as imperative in its demands as competition between carriers, has been relied upon by shippers as sufficient to constrain the grouping of rates from different points. A considerable extent of territory containing a large number of mines, quarries, or manufacturing establishments, has frequently been given identical freight rates, upon the ground that otherwise the more distant points would be driven from the market and thus important industries might be ruined, resulting indirectly in serious loss of revenue to the road. This argument has even been pressed to the extent that manufacturers, for example, 150 miles from a common terminus have claimed that they should receive the same rates given to others only 50 miles from the same point. They have insisted that their expenses in other respects were substantially the same, and they have demanded the same rates of transportation as an alleged business necessity. This theory, in certain localities and upon certain commodities, has at times been followed to some extent, and it is not unusual to hear it said that it may eventually be found to be both expedient and just to place all freight rates for like commodities at the same sum per hundred pounds, regardless of distance, upon the principle which now controls the transportation of mail matter by the Post Office Department—the "postage-stamp system," so-called. This is undoubtedly an extravagant way of looking at the subject, for while it is true that the fixed expenses of a railroad or steamboat line are constant, and its maintenance is a

steady and uniform outlay, and that the cost of receiving and delivering any given article of freight, including the use of the terminals and other facilities, bears no relation to the distance traversed but is substantially alike in all cases, so that the service in many respects could be measured as fairly by the quantity transported as by the length of the haul, nevertheless the fact remains that upon many and perhaps most articles of traffic the haul is the leading element of expense, and the distance fairly controls the rate of compensation. This is particularly true in respect to passenger traffic; in respect to freight the rate customarily varies per hundred pounds at each distance point established in the rate sheet, the ratio of the increase of the rate diminishing with the increase of the distance, thus combining the two elements in an approximately just result. No opinion is now expressed or intimated in respect to how far the grouping of rates can be properly carried upon considerations founded solely upon the competition of business, or as to whether such considerations are, to any extent, admissible.

Another occasion of a somewhat wide grouping of rates has arisen under the operation of the fourth section of the Act to regulate commerce. Prior to April 5, 1887, examples were very common in which a larger sum was charged for a shorter than for a longer distance over the same line in the same direction. The long and short haul provision of the law involved new methods, and upon many roads and systems the rate established to the more distant point was taken as the basis to which the tariff at intermediate points was reduced. This, it was alleged, was the only alternative; for to raise the rates at more distant points, where the competition of other carriers controlled the traffic, involved retiring from such business altogether. The tariffs on file with the Commission show that at a vast number of interior points the rates are now grouped so as to be the same as at some more distant terminal, and the explanation given is that heretofore they were higher than at the point beyond, but were reduced to bring them into conformity with the law.

This, of course, cannot be regarded as directly authorized

by the law, for the fourth section of the Act provides that "this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance." And it is a fact to which the Commission has already called attention, that one effect of this system of rate-making is to interfere with the business of jobbing centers located between the original shipping point and the various points of destination. When rates are made, for example, from Chicago to La Crosse at a given sum, and at the same rate from Chicago to all points between La Crosse and Mankato or St. Paul, it is obvious that the Chicago jobbers have a great advantage over the La Crosse jobbers, who cannot buy, re-ship and sell without an addition to the given rates equal to the local charges from La Crosse to the points of consumption. To what extent this practice may be legitimately pursued has not as yet been considered by the Commission. *La Crosse Man. & Jobbers' Union v. C., M. & St. P. et al.*, 1 I. C. C. Rep., 629. But the legislative purpose as manifested in the 4th section of the Act to regulate commerce is distinctly in the direction of relieving the smaller points—in other words, the ultimate consumers—from the burden of rates higher than those paid by more distant or competitive points, and when the application of the rule in reducing intermediate or local rates to a common level, or in increasing rates on long-distance traffic, has surprised the merchants at distributing towns, an investigation has usually shown that their former prosperity was based upon two elements, both working in their favor and both denounced by the Act to regulate commerce, to wit, the granting of rebates and special rates in their behalf, and the making of higher rates to local points than to more distant terminals or competitive centers. *Crews v. Richmond & Danville R. R. Co.*, 1 I. C. C. R., 401; *Martin v. Chicago, Burlington & Quincy R. R. Co. et al.*, 2 I. C. C. R., 25.

This explanation is given in view of the claim which is made in complainants' brief that milk and cream are the only articles the tariff upon which "takes no account of the length of the haul, but charges as much for a long haul as for a short



one." This belief is wholly incorrect.\* There are few lines which do not show a considerable grouping of rates upon one consideration or another. The principle of grouping is not novel. The propriety of its application is properly open to challenge in every case, and every case must be justified upon its own facts and peculiar circumstances. The above examples of its use have been given for the purpose of distinguishing them from the question here presented.

The transportation of milk is in some respects a very peculiar description of traffic. The expenses are wholly out of proportion to the expenses involved in respect to any other article of freight. It must be handled upon passenger trains or by a special train service. Time is of the first importance. The period which can be permitted to elapse between its production and its delivery to the consumer is necessarily very short. This fact involves the organization of methods adapted solely to this traffic. Cars must be specially equipped. The route covered by the train must be rapidly passed over, and the empty cans returned with like promptitude. Accuracy is required in every detail. Protection against frost must be afforded. A large addition to the number of train hands is required. A long section of the terminal station is appropriated to this use, where a special staff of clerks and laborers are on duty throughout the night. It is an exceptional traffic in the system of handling made necessary by the unusual risk and expense.

It is also easy to perceive that these additional arrangements and expenditures apply to the whole quantity of milk handled on the line, without any reference whatever to the length of the haul. The special equipment and trains, the extra labor and care, the terminal service and supervision, are all employed upon the milk business as a unit. This fact is recognized by the complainants, for their brief well says: "It will be observed that the character of the service rendered is the same, and every element which goes to make up the expense account to the railroad performing this service is identically the same, whether the milk is taken to its cars 183 miles from New York or 21 miles from New York, except in the length of the haul." And it may well be

doubted whether the length of haul establishes in this case any very material difference between the expense at different localities. The milk train, when equipped and organized, should be expected to make a daily run. The train hands are under daily wages, and their trip may as well be a full run as a short one. It is true that if the trip was very short one crew might be able to do the daily work in both directions, but this could not be done from the Orange county points. In fact, the Erie milk trains both start from stations in Orange county. So far as the evidence shows, only two cars per day are brought by this road from points beyond. It is the giving of the 35-cent rate to these two cars against which complaint is directed, so far as the Erie road is concerned. On the New York, Ontario and Western the case is different, for that road collects milk quite extensively in two counties beyond Orange, and the route of its milk train is over 200 miles, its first milk station being 55 miles from Jersey City. Yet it does not appear that the extra man in the milk car is paid other than by the day, or that the expenses of the trip, upon this road even, are materially increased by its length. The items of fuel and of wear and tear are apparently the chief matters in respect to which the milk-train service for the more distant points is more expensive than that for the nearer points, and those items when distributed would appear so small that relatively there is in fact very little difference in expense.

Upon the New York, Susquehanna and Western the milk train on its main line, wholly in New Jersey, is met at Two Bridges by cars from its branch to Middletown, New York; 14 miles of this branch are in Orange county, and Middletown is further from Jersey City than any other milk station on its entire route. The milk train of the Lehigh and Hudson River railroad simply covers its road daily with a single crew, and its expenses would be reduced but very little upon any shortening of the daily run. Moreover the road is peculiarly situated, in this, that its direction is northeasterly; Pequest, the first milk station, is little if any further from Jersey City, in a direct line, than Greycourt, the point of connection with the Erie; and the average distance from

Jersey City of the whole route, "as the crow flies," is about the same as that of Greycourt.

Of course, if the expense was absolutely identical no argument from that consideration could be derived in opposition to the grouping of the rates. The difference in expense upon the routes covered by the regular milk trains of the various defendant roads, taking all the elements into the account, is so trifling that the argument against grouping from this source is not at all controlling, and in fact is of very slight weight.

Complainants do not fail to perceive that the application of the rule for which they ask would relatively reduce the milk rates at points between Orange county and Jersey City. Yet no evidence is given to show that the milk producers at the latter points are injuriously affected by, or even that they object to, the present system. The petitioners are not prejudiced by the fact that they are charged no more than is charged to others situated nearer the terminus; and so far as Orange county is concerned, its position being intermediate, is such that the advantages and disadvantages of its geographical location are substantially equalized by the present identical rates; in other words, upon a strictly mileage basis the complainants would be charged more than milk producers at the nearer points, and less than at the more distant points, the net result upon the four lines in question being not very different from the present rate, so far as the Orange county producers as a body are concerned.

The question comes therefore to this: Whether the Act to regulate commerce requires the exaction of a relatively greater impost upon milk shipped from the counties of Sullivan and Delaware than upon milk produced in the county of Orange. In that view the application has the aspect of being an effort to restrict the production of those counties, or at least to encumber it by relatively larger burdens. The farmers who would be most directly affected by the proposed revolution in the tariff are not before us and have not been heard. This, however, is not material, for the conclusion to

which we have arrived in their absence is not against their interest.

The case in this respect is put by the petitioners upon the ground that shippers by rail are entitled under the law to the benefit of any advantage apparently afforded by nearness to a common market. It is urged that carriers have no right to remove inequalities arising from location by arrangement of tariffs upon identical rates for long distances, and that the Act to regulate commerce was passed, in part at least, to correct what they conceive to be the inherent injustice of grouped rates.

The section of the act upon which they rely is framed with the care and precision which are manifested in the selection of the phraseology of the entire statute; it declares unlawful the giving of any "undue or unreasonable" preference or advantage to one locality as against another, and the subjection of any locality to any "undue or unreasonable" prejudice or disadvantage.

Upon the point thus indicated the facts do not satisfactorily support complainants' claim. The language of the law implies that there may be advantages which, upon the whole, are not unreasonable or undue.

The argument of complainants upon this question is in part founded upon what is called a "fact which is known as a matter of common experience," namely, "that the nearer the land lies to the great city terminals of the great roads the higher is the market price for such land by reason of the supposed advantage resulting from its proximity to the market." This is called a "natural law." But as applied to the present case the statement fails to present such a general principle that the Commission would be justified in taking notice of such a fact as is alleged without proof to support it. Orange county itself is a considerable distance from the common market. It is not sufficiently near to be materially influenced by opportunities for market gardening or for the sale of building lots. The average distance of its various milk stations upon the defendant roads is at least 60 miles from Jersey City. No evidence is furnished in respect to the market price of its farming lands, nor in respect

to the value of the farming lands in the counties of Sullivan and Delaware. There is no proof as to the comparative cost of producing milk or of labor in the three counties named. If any such distinction as is alleged exists in fact there may be reasons which cause it other than the bare fact of distance from New York. The whole subject is left as matter of conjecture merely. We do not know that any such difference in market price in fact exists. If it does exist we do not know the cause.

The Commission in considering the question of whether or not advantage to localities was or was not undue and unreasonable, has had occasion several times to say that regard must be had to the results which flow from the fact that rates are relatively lower at some points than at others, and that the mere existence of the fact of advantage is not sufficient to show a violation of the law. For example, upon this very subject of the grouping of rates, in the case of the *La Crosse Manufacturers' and Jobbers' Union v. Chicago, Milwaukee and St. Paul Railroad Company*, 1 I. C. C. Rep. 631, it was said that "the system itself is therefore not necessarily illegal; it only becomes illegal when it can be shown that illegal results flow from it." See, also, *Business Men's Association of Minnesota v. Chicago, St. Paul Minneapolis and Omaha Railroad Co.*, 2 I. C. C. Rep. 52.

In the present case the petitioners have utterly failed to show any way in which they are in fact injured by the grouping of the rates, or by the fact that more distant points have the same rates. So far as appears the Orange county farmers do not receive any less for their milk because an opportunity is given to farmers in Sullivan and Delaware counties to participate in the industry upon the same terms. Nor does it appear that there is any glut in the market created by the extension of the identical milk rates, or that there is any difficulty in disposing of the entire Orange county product. Some apprehension seems to be felt that the market price in New York City may be reduced by the bringing in too much new territory, and that the opening of like facilities at more distant points may eventually crowd the nearer points out of the market. But there is no proof whatever

that any such state of affairs now exists. On the contrary the evidence shows a constant and rapidly increasing consumption of milk arising from the natural growth of the cities which constitute the market, and from the enlarged use of milk and its products which is stimulated by a steady and satisfactory supply; in order to meet this constantly growing demand the sources from which the product is drawn are necessarily continually extended; it seems that at first the immediate neighborhood of the cities sufficed to furnish all milk required; presently the lines of supply were gradually prolonged in various directions, until they ramified throughout the distant county of Orange, and now are extended beyond that county to more distant localities still; but it does not appear that the price is affected by any excess of delivery, or that any milk of Orange county producers remains unsold. Prudence would influence railroad managers to confine the collection of milk within the territory in which it can be most cheaply handled and to extend the milk system no further than the increasing growth of the demand should require. It does not appear but that this has been in fact the course which the business has taken; it is not shown that the addition of new territory at any time has operated to the prejudice of the old.

It is said by way of argument that there is an inherent injustice in carrying the product of one locality at a less rate than that of another which lies nearer to the common market, because in that case the nearer shipper pays a part of the expense of transporting the freight of his rival a longer distance upon the same train. This result does not necessarily follow, however. In cases where the rate is sufficiently high to afford a reasonable profit upon each portion of the traffic by itself there are no losses upon the longer portion of the route to be made up by overcharges upon the remainder. Although the product of the most distant locality may yield a substantially less measure of profit than that of the nearer, nevertheless, the traffic which pays the least profit to the carrier may pay its own entire transportation expense, and perhaps a good deal more. In that event there is nothing in its transportation which is saddled upon other communities,

and the smaller profit which is made from the longest haul helps to support the facilities which the carrier is enabled to maintain for the common benefit of the entire route covered. In the present case it will not be contended by complainants that the milk business from even the most distant stations is done at any loss to the roads.

In considering a question of this kind the interests of the public as a whole should be kept in view. It will not do to look solely to the pecuniary advantage of the producers. The great body of consumers are equally entitled to be considered, although their pecuniary interests are individually less because their number is so much greater. Milk is one of the prime necessities of life, and its constant distribution and general use have become a marked feature of the modern civilization of our great cities. This has been made feasible by the intelligent employment of the unexampled facilities which railroads now afford. The public are entitled to have the most full and free access possible to all reasonable extent of producing territory, and anything that might tend to embarrass the production of a sufficient quantity of milk to supply all demands, or to hinder the regular shipment to the dealers of an adequate daily quantity, would be an evil of great public consequence. The system of making a uniform freight rate upon all milk transported upon the same road to a common market is one of long standing. No one was heard to say that he remembered its origination. It has served the public well. It tends to promote consumption and to stimulate production. The method is peculiar, it is true, but the traffic is peculiar. It does not appear that the petitioners are pecuniarily damaged by the gradual extension of its opportunities to more distant points. The benefits to the farmers of those localities, as well as to the great army of consumers, are obvious. It is not apparent how any other method could be devised which would present results equally useful to the public or more just to the complainants. To subdivide the freight rates according to distance, or even to introduce a system of shorter grouping of rates, would necessarily compel the adoption of a new system of receiving, delivering and accounting, would cause great



inconvenience to the carriers and the dealers, would impede the rapid and reliable management of the traffic; would restrict the extension of territory required for future public demands, and apparently would not benefit the Orange county farmers in the slightest degree. Until some actual injury to them arises the Commission does not feel justified in holding that the grouping of the milk rate upon the route carried daily by a separate milk train, operated as a unit, works undue or unreasonable prejudice to the complainants; and it is, moreover, impressed with the belief that the present system is, upon the whole, the best that can be devised for the general good of all concerned in the traffic.

It is proper to add that the milk business referred to, from its nature, is confined to the neighborhood of large cities, and that milk rates are not usually interstate rates. It would be a misfortune to have different principles adopted in the method of handling the traffic upon lines which supply the same market; and the Commission is supported in reaching the result above stated by the fact that the grouping of milk rates by charging the same sum upon all milk carried to the same market has been recently considered and approved by two able State Commissions.

In this connection the manner in which the subject of grouped rates has been treated by the English tribunals and by Parliament is of interest. The Railway and Canal Traffic Act of 1854 contains a provision in very similar terms to the section of the Act to regulate commerce which is here in question. It reads as follows:

“No such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic in any respect whatsoever, nor shall any such company subject any particular person or company or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”

Under this section various decisions concerning the group-

ing of rates were made, at first exhibiting an apparent tendency toward the position that undue and unreasonable prejudice is an ordinary consequence of the grouping system. An application in the Court of Appeals involving a review of a decision of the Railway Commissioners upon the subject was, however, dismissed, the Lord Chancellor (Lord Selborne) using the following language:

“It is admitted that if preference is constituted by the railway company carrying for certain colliery proprietors, on more favorable terms than for others, *prima facie* that fact was proved, because beyond question they did carry upon the same terms as to charge for the collieries for which they performed more than the same service. They gave a decided, distinct, and great advantage, as it appears to me, to the distant collieries. That may be due or undue, reasonable or unreasonable, but under those circumstances is not the reasonableness a question of fact? Is it not a question of fact and not of law whether such a preference is due or undue? Unless you could point to some other law which defines what shall be held to be reasonable or unreasonable, it must be and is a mere question—not of law but of fact.”

*Denaby Main Colliery Co. v. Manchester, Sheffield and Lincolnshire R'y Co.*, 3 R'y & Can. Traffic Cases, 426, 441; 4 *ib.*, 23, 28, 437.

The effect, therefore, of the final decision in the Denaby case was to adjudge that the Court of Appeals, having jurisdiction of questions of law alone, could not revise the decision of the Commissioners, who had found, upon the facts shown them, that the preference in question was undue and unreasonable.

In a more recent case before the Commissioners the basis of the earlier decisions was clearly stated by the following language used in distinguishing them from a pending case:

“But they have not shown (a fact which was found in the Denaby case) that their output is at all in excess of the de-

mand for their coal, or that a single ton of coal is left on their hands because they cannot at existing rates find a market for it."

*Broughton and Plas Power Coal Co., Limited, and Others v. The Great Western R'y Co.*, 4 R'y and Can. Traffic Cases, 203, (1883).

A still later decision re-affirms the proposition that applicants claiming undue preference "must show that they are damaged by the undue preference complained of."

*Skinninggrove Iron Co. v. Northeastern R'y Co.*, 5 *ib.* 244, (1887).

The result reached in the present case is believed to be in entire harmony with the construction given to the same statutory provision by the English tribunals.

There appears, however, to be a substantial difference in the expense when milk is brought from points beyond the end of the route of the regular milk trains upon the New York, Lake Erie and Western and the New York, Ontario and Western roads. Two refrigerator cars are hauled every day from Summit and Deposit to Port Jervis upon an ordinary mixed train, the expense of which is separable from and additional to the expense of the milk train proper. The daily run of the milk train is 87 miles, while these cars are taken nearly 100 miles further. It requires four cars to perform this service, for a round trip to Jersey City and back cannot be made within twenty-four hours, as the trains are run. The manner in which milk is collected upon the New York, Ontario and Western at points beyond Sidney was not explained in the proofs, but similar conditions probably exist. A charge for such service somewhat higher than the charge made upon the route of the daily regular milk train, proper would seem to be just, and perhaps to be necessary, in order to fairly equalize the proportionate privileges afforded, in view of the material increase of cost required to send cars out to points beyond the terminus of the daily

trip, and to bring them back loaded, at an hour convenient for making up the train.

Nevertheless it does not appear but that the present rates to those more distant points are already sufficiently high. No increase in those rates can be recommended or would be proper, in view of the facts above stated, upon the point of the reasonableness of the present tariff. It is presumed that the rates to all points can be adjusted by the carriers themselves in conformity with the views herein intimated and without any further consideration of details by the Commission. In case that the subject of a reduction of the rates in general shall be brought again before the Commission, the question of grouping, to the extent last above indicated, will be regarded as still open.

The petition is therefore held to be not sustained upon the question of charging the same rate to all points reached by the regular daily milk trains upon the several defendant roads. Upon the question of the reasonableness of the rate so charged the petition will be retained by the Commission to enable the complainants to produce evidence of additional facts if they so desire.

Commissioner Morrison does not join, but dissents from the report and opinion of the other Commissioners.

C. H. GRIFFEE *v.* THE BURLINGTON AND MISSOURI  
RIVER RAILROAD COMPANY IN NEBRASKA,  
AND ALSO AS LESSEE OF THE ATCHISON AND  
NEBRASKA RAILWAY.

Submitted on depositions at Dubuque, Iowa, July 27, 1888.—Decision filed  
October 8, 1888.

The offense under Section 2 of the Act to regulate commerce of giving free transportation to an individual, consists in the charging, demanding, collecting or receiving by the carrier from some other person or persons, a compensation for a like service when none is contemporaneously charged or received from the person thus transported free.

Where a free pass was given to a discharged employee of the company on the assumption that he might still be regarded as an employee, but it affirmatively appeared that it was never used, and that it expired in the hands of the party to whom it was issued by a limitation contained on its face, and was produced before the Commission as an unused instrument in a proceeding in which a complaint of its issue was made; *held*, that the facts did not show that a breach of the third section of the Act had been committed, no free transportation whatever having been had, and the party being entitled to none according to the terms of the instrument as it then was.

*G. M. Lambertson*, for Complainant.

*T. M. Marquett* and *J. W. Deweese*, for Defendant.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner* :

The complaint was filed May 10, 1888, and charges that the defendant, the Burlington and Missouri River Railroad Company in Nebraska, on its own and its leased road, the Atchison and Nebraska railway, has been guilty of unjust discrimination in charges made for carrying passengers between the city of Lincoln, Nebraska, and the city of Atchison, Kansas, in that certain passengers and persons traveling between said points on said line of railway are charged three cents a mile for every mile traveled, while others are given free transportation, and specifies that on the 10th of

April, 1887, the defendant "issued free transportation and carriage to one C. H. Waite, a resident of Lincoln, Nebraska, to and from Atchison, Kansas, and Lincoln, Nebraska," he not being at the time included in any of the enumerated classes to whom free transportation might be given under the statute.

The case of Waite is the only one particularized in the testimony to show a breach of law, and there is no proof of the issuance of a pass in any other instance.

The facts shown by the evidence are that Waite had been in the employment of the defendant several years as an engineer, and was discharged for cause shortly before April 10, 1887. Being then out of a situation he applied to the superintendent of the defendant for a pass to go to Atchison, Kansas, to procure employment on the Southern Kansas railroad. He stated that he had no more money than he needed for the support of his family, and that in view of his service for the company, he thought he ought to have a pass. Trip passes were accordingly issued to him on the 10th of April, 1887, from Lincoln to Atchison and return. They expressed on their face that they were issued to him as an ex-employee, and were by their terms good only until April 30, 1887, a period of twenty days.

The fact was undisputed that the passes were never used. No one was ever transported upon them. They were produced in evidence upon the trial, and it appeared upon their face that they had long since expired by limitation of time.

On these facts a contravention of the statute has not been shown. The offense charged is under the second section of the Act, and consists in charging, demanding, collecting or receiving from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service.

In this case confessedly there was no transportation under the pass; nothing whatever was done under it. It was held by the recipient and became defunct in his hands. Assuming therefore that Waite could not be regarded as an em-

ployee in the sense of the statute, to whom free transportation might be given, and also that the issue of the pass to him constituted *prima facie* a violation of law, the *prima facie* case is disproved by the showing that no transportation whatever took place under it, and that none can now or could when this proceeding was commenced take place under it, for the reason that the privilege it undertook to give expired long ago by the terms of the pass itself. The complaint, therefore, is not sustained, and the order of the Commission is that the proceeding be dismissed.



**THE SPARTANBURG BOARD OF TRADE, PETITIONER,  
v. THE RICHMOND AND DANVILLE RAILROAD  
COMPANY, THE CENTRAL RAILROAD AND  
BANKING COMPANY OF GEORGIA, THE LOUIS-  
VILLE AND NASHVILLE RAILROAD COMPANY,  
THE AUGUSTA AND KNOXVILLE RAILROAD  
COMPANY, THE PORT ROYAL AND AUGUSTA  
RAILROAD COMPANY, THE PORT ROYAL AND  
WESTERN CAROLINA RAILROAD COMPANY,  
THE OHIO AND MISSISSIPPI RAILROAD COM-  
PANY, THE NASHVILLE, CHATTANOOGA AND  
ST. LOUIS RAILROAD COMPANY, THE ST.  
LOUIS, IRON MOUNTAIN AND SOUTHERN  
RAILROAD COMPANY, THE CHICAGO, ST. LOUIS  
AND PITTSBURGH RAILROAD COMPANY, THE  
JEFFERSON, MADISONVILLE AND INDIANAP-  
OLIS RAILROAD COMPANY, THE CINCINNATI,  
HAMILTON AND DAYTON RAILROAD COM-  
PANY, THE CINCINNATI SOUTHERN RAILROAD  
COMPANY, THE EAST TENNESSEE, VIRGINIA  
AND GEORGIA RAILROAD COMPANY, THE  
WESTERN AND ATLANTIC RAILROAD COM-  
PANY, THE WESTERN NORTH CAROLINA RAIL-  
ROAD COMPANY, THE ASHEVILLE AND SPAR-  
TANBURG RAILROAD COMPANY, THE GEORGIA  
RAILROAD COMPANY, THE ILLINOIS CENTRAL  
RAILROAD COMPANY, AND THE CINCINNATI,  
ST. LOUIS AND CHICAGO RAILROAD COM-  
PANY, DEFENDANTS.**

Heard July 20, 1888.—Decided October 8, 1888.

The Commission is not willing to determine the relative reasonableness of rates at many stations, and in a large extent of territory, upon the mere face of tariffs, and without further proof.

Where it is obvious that there are many parties interested as directly as is the complainant in the question before the Commission, opportunity will be given them to appear on the taking of evidence.

Where on a question of rates it appears that higher rates are made upon the shorter hauls on the same line and in the same direction, the carrier making them must take the burden of proof to show their reasonableness.

A case finally submitted without evidence, ordered adjourned to a future day for the purpose of taking evidence on the principle above stated.

No counsel appeared for the petitioner.

*J. T. Worthington, Esq.*, counsel for the Richmond and Danville Railroad Company, the Western North Carolina Railroad Company, and the Asheville and Spartanburg Railroad Company.

*J. S. Blair, Esq.*, counsel for the St. Louis, Iron Mountain and Southern Railroad Company.

*J. T. Brooks, Esq.*, counsel for the Chicago, St. Louis and Pittsburgh Railroad Company.

*Ramsey, Maxwell & Ramsey*, counsel for the Cincinnati, Hamilton and Dayton Railroad Company.

*W. M. Baxter, Esq.*, counsel for the East Tennessee, Virginia and Georgia Railroad Company.

#### REPORT AND OPINION OF THE COMMISSION.

**BRAGG, Commissioner :**

The complaint in this proceeding involves the reasonableness and justness of freight rates at Spartanburg, S. C., on eastern as well as western freights, made, as is alleged, by the railroad companies, defendants. So much of the complaint as related to the Central Railroad and Banking Company of Georgia, the Augusta and Knoxville Railroad Company, the Port Royal and Augusta Railroad Company, and the Port Royal and Western Carolina Railroad Company was withdrawn by the petitioner before the hearing.

The answer of each of the defendants, except the Richmond and Danville system, denies that it makes the rates to

Spartanburg or that it has lines which terminate at that point, and avers that from its terminal points to Spartanburg it simply adds the rates of the connecting lines which reach Spartanburg.

The remaining defendant railroad companies whose lines alone reach Spartanburg, namely, the Richmond and Danville Railroad Company and the lines composing its system, deny all unjust discrimination involved in the complaint. The Georgia Railroad Company, in addition to its answer, also demurs to the complaint, and the Richmond and Danville Railroad Company and the Asheville and Spartanburg Railroad Company, in addition to their answers, move to dismiss the complaint.

We have carefully considered the demurrer and these motions to dismiss, and they are each adjudged to be insufficient to justify us in dismissing this complaint.

No oral evidence was offered on the hearing. The petitioner did not appear at the hearing, relying upon the printed tariffs of the defendants as justifying its complaint. Upon the petition and answers and tariffs it appears that the Richmond and Danville Railroad Company and its system are the parties defendant, who seem to be responsible for the rates complained of at Spartanburg.

The burden of the complaint upon its merits seems to be the difference made in rates on freights from New York to Spartanburg and other points along the line of the Richmond and Danville Railroad Company, such as at Charlotte and stations between Charlotte and Spartanburg, and at stations between Spartanburg, Atlanta, and including Atlanta, and the difference in Western freights, such as meat, flour, grain, etc., at Spartanburg, Union, Gaffney's, Black's, Chester and Columbia, in South Carolina, and Rutherfordton and Charlotte, in North Carolina, and Atlanta, in Georgia.

Questions such as are here presented, involving the relative reasonableness of rates at many stations and in a large extent of territory, we are unwilling to determine upon the mere face of tariffs. Shippers at every such station, whether represented before us in this proceeding or not, are interested in these questions, and we deem it necessary, as a matter of

justice to all concerned, that evidence shall be fully presented showing the circumstances and conditions, if any such exist, that are relied upon by the Richmond and Danville Railroad Company and its system for the differences in rates as they appear upon these tariffs by which the higher rates to Spartanburg than to other points on its line further distant from the place of origin of the freight, can be justified. In the presentation of such evidence the burden of proof will be upon the Richmond and Danville Railroad Company to justify, if it can, the higher rates it charges at Spartanburg than at other points on its line further distant from the point of origin of the freight.

A period of forty days from this date will be allowed for the taking of this evidence. The parties, namely, the petitioner and the Richmond and Danville Railroad Company, may, if they prefer, take their evidence before the Commission, at its office, in the city of Washington, at such time as they may indicate to the Commission they desire to do so. Or these parties may respectively take their evidence before a notary public at such point as may be most convenient to either of them, in such case giving the other parties notice of the time and place of taking such testimony and furnishing a list of the witnesses who will be examined, and the testimony so taken must be properly certified, sealed and forwarded to the Secretary of the Interstate Commerce Commission, at Washington, D. C.

This case is adjourned for further proceedings upon the evidence so taken until November 27th, 1888, at the office of the Commission, in the city of Washington, when it will again be called.

The other defendant railroad companies are not required to make further appearance to this controversy or to furnish any evidence respecting it, unless they shall hereafter be notified by the Commission, namely, The Ohio and Mississippi Railroad Company, The Nashville, Chattanooga and St. Louis Railroad Company, The Louisville and Nashville Railroad Company, The St. Louis, Iron Mountain and

Southern Railroad Company, The Chicago, St. Louis and Pittsburgh Railroad Company, The Jefferson, Madisonville and Indianapolis Railroad Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Cincinnati Southern Railroad Company, The East Tennessee, Virginia and Georgia Railroad Company, The Western and Atlantic Railroad Company, The Illinois Central Railroad Company, and The Cincinnati, St. Louis and Chicago Railroad Company.

THE DELAWARE STATE GRANGE OF THE PATRONS OF HUSBANDRY v. THE NEW YORK, PHILADELPHIA AND NORFOLK RAILROAD COMPANY, ET AL.

The Commission is liberal in allowing amendments to complaints, but will not allow one that would be in effect making a new case.

Amendment is not necessary to bring in matters that would have been the subject of proof under the complaint as originally filed.

A case involving local rates ordered to be heard before the Commission at a central point in the territory immediately affected by the rates.

*George H. Bates and Levi C. Bird*, for complainants.

*James A. Logan and George V. Massey*, for defendants.

The complainant is an association of farmers and business men organized and located within the State of Delaware. On December 2, 1887, it filed its complaint on behalf of itself and of the farming and trucking interest of the State and the eastern shore of Maryland, charging the defendant companies as follows:—

*First*, They have made unjust and unreasonable charges for service rendered, especially in carrying perishable freights over their roads.

*Second*, They have granted favors by rebates or false schedules of weights to individuals and companies in preference to others.

*Third*, They have given undue advantage to particular localities by giving lower rates of freight and extra and more rapid train service to more distant points, so that freight from those points would be delivered in New York and other northern cities so long in advance of similar freight from nearer points as to destroy the market for the latter.

*Fourth*, They have violated the fourth section of the Act to regulate commerce by charging shippers at Norfolk, Va., lower rates for carrying produce to New York and other northern and eastern markets than they charge shippers along the lines of their roads on the Peninsula for carrying

similar products to the same markets over a much shorter distance.

The complaint further alleges that the charges made by defendants for the transportation of freight from points on their lines to New York and other northern and eastern cities are exorbitant and unreasonable.

The defendants answered the complaint at length, denying its allegations, but in their answer they claim that it is not sufficient in law, nor sufficiently specific in its allegations of fact, and they ask that for that reason it be dismissed.

On January 12, 1888, after the answer had been filed, the Commission made an order reciting that, "It appearing to the Commission that the complaint is not sufficiently specific for the purpose of fully apprising the defendants what violations of law the complaint expects to prove and rely upon at the hearing: It is ordered, that within ten days the complainant file with the Commission a specification of the particular instances of violation of law of which it intends to offer evidence at the hearing under the several paragraphs of its complaint, and that it also within the same time mail to each of the defendants, addressed to the general counsel thereof, at the place where its general officers are located, a copy of such specifications of particulars." In compliance with this order complainant filed specifications under the first and fourth paragraphs of the petition, and gave notice that with respect to the second and third paragraphs of the petition the petitioner upon further investigation made no specifications, and will offer no proofs thereunder.

On August 16, 1888, the complainants, on obtaining leave of the Chairman of the Commission, filed an amendment to the petition as follows, at the end of the first paragraph thereof: "And further with respect to perishable freight defendants do not furnish the efficient train service and speed, and proper and careful handling of the goods, and prompt delivery of freight at Jersey City and Philadelphia which the nature of the business requires, and the necessity for all



which has been from time to time alleged and set up by the railroad companies as justifying the extremely high and unjust rates of freight charges by them as aforesaid. And complainant particularly alleges that during the peach and berry season of 1887 the arrangements of said Pennsylvania company for the delivery of berries and peaches at Jersey City were so inadequate that such delivery was rarely effected until many hours after the time at which the cars should have been ready for such delivery. And further that similar delays occurred at Philadelphia, so that the main market which should have been available to shippers and consignees in each of said cities was wholly lost."

The defendants made answer to the amendment as follows: "That the said amendment was filed without these respondents being afforded any opportunity to be heard against the same, and they respectfully protest that the said amendment should not be allowed, nor should these respondents be held to answer thereto, because the allegations therein contained are not legally germane to the grievances complained of in the paragraph to the petition of which it assumes to be amendatory ;

"The several matters therein set out relate solely to contractual obligations of the carrier, which attach at common law, and that such allegations, even if sustained or proved, only show a breach of contract or duty for which the carrier would be answerable only in damages to the party affected thereby; and such damages could only be ascertained by the intervention of a jury ;

"Said amendment does not set forth any matter or thing within the jurisdiction of the honorable Commission to relieve ;

"The allegations contained in the said amendment are not sufficiently direct and specific to advertise the respondents with reasonable certainty in what particulars its train service is inefficient ;

"Subject to the foregoing protest against liability to answer, and which this Honorable Commission is respectfully asked to duly consider and pass on, these respondents make

answer to the matters alleged in said amendment, denying each, every and all of the allegations therein contained;

“Wherefore your respondents pray that the proposed amendment be disallowed and the said original petition, with the specifications thereto, be dismissed.”

The case being thus at issue an order was made fixing as a date of hearing the 20th of September, and as a place Dover, in the State of Delaware, this being a central point in the region affected by the rates which are under consideration. After notice had been given of this assignment, counsel for the defendants filed a motion to strike out the amendment to the complaint, and also to change the place of hearing from Dover to Wilmington. This motion, by consent of counsel, was brought to a hearing at Washington, on September 13, 1888, before Commissioners Morrison and Bragg, the other Commissioners being elsewhere engaged. In support of the motion to strike out it was contended: *First*, that the several matters alleged by the amendment would, if established by satisfactory evidence, show only a violation of a common law duty or a breach of contract obligation, or both, and are not therefore within the purview of the Act to regulate commerce, nor within the jurisdiction of the Commission. To this point this case of *Schofield v. The Lake Shore & Michigan Southern Railway*, heretofore decided by the Commission, was cited. *Second*, the amendment was not germane to the original complaint; and *third*, the matters specified, even if established, could only be redressed by an award of damages to parties aggrieved, an award which the Commission could not make; and *fourth*, the amendment does not disclose with reasonable certainty the particulars in which the train service of the respondent is inefficient.

On behalf of the motion to change the place of hearing, it was contended that Wilmington would be much the more convenient place for the attendance of parties, and for procuring the attendance of witnesses, and that it would be economy of time and of expense to have the hearing held at that place instead of Dover.

After a full hearing of counsel for defendants in support of

the motion, and counsel for complainants in opposition, the motions were denied.

**MORRISON, Commissioner, orally :**

We have fully considered the matters submitted to us. The practice of the Commission is very liberal in allowing amendments. It will not allow an amendment that makes a new case, but this we do not understand to be a new case. The question involved is one of the reasonableness of rates and of efficiency of service, and the kind of service, the number of trains, and whether the efficiency is equal to the requirements of the business is a question necessarily involved in the question of reasonableness of rates. The complainants are not asking damages. They want a more efficient and a better service. If, in the investigation of the matter, the Commission should find the service is not good, that defendants have not the trains and do not give the kind of cars which they should give to suit the demands of the traffic, the complainants may reasonably expect that the defendants will amend their service and make it better for the future. We think the amendment is properly made ; in fact, we do not see that it calls for any evidence that might not have been heard without it. The motion to strike it out should therefore be denied. As to the place of hearing, it has been deliberately fixed, and we think it should remain as fixed. The full Commission would undoubtedly have a right to change it, but we think it very unlikely that it will be changed. We will, however, submit that question to our associates and apprise counsel of their determination.

**BRAGG, Commissioner, orally :**

In the conclusions stated by the senior Commissioner I fully concur. Some few additional observations occur to me that perhaps might be made in the line of what has been stated, and in connection with what has been said.

The service afforded by the railroad companies for transporting fruit and milk to the city of New York has been before us, in other cases, and we have heard evidence offered

by the carrier that where there is a great deal of extra expense in furnishing extra service and running extra trains, these things might be considered as reasons for charging higher rates. The service rendered bore upon the cost of transportation and the reasonableness and fairness of the rates.

This amendment seems to anticipate to some extent the defense, and it claims that this extra service rendered was not such as justified the extra rates charged. Without any averment on this subject, the Commission proceeding as heretofore in other cases of the same kind, would have allowed the carrier to have introduced evidence to show the service, and we would have allowed the petitioners on the other side to have met that, if they could, by evidence showing that the service was not as expensive as it was claimed to be, and not as good as was claimed by the carrier. We follow the rules laid down in the statutes of the United States, and feel ourselves constrained to be liberal in the allowance of amendments to complaints in matters before us. But we have not allowed a petitioner to make a new case, because that is beyond the limits of an amendment. That is what we substantially held in the case of *Riddle, Dean & Company v. The Baltimore & Ohio Railroad Company*, 1 Interstate Commerce Commission Reports, p. 372. We adhere to that decision, but we do not think this is making a new case at all. We would have allowed the evidence upon the subject embraced in this amendment just as well without the amendment as with it.

It seems that the Chairman of the Commission allowed this amendment. No one is more familiar than he is with our practice in such cases heretofore, and in allowing it he was strictly in the line of that settled practice.

The hearing will be before the Commissioners, and we will confine the evidence within proper bounds. The complaint contains nothing involving the operation of the road any further than it bears upon the question of rates, what service is performed, and how performed.

THE DETROIT BOARD OF TRADE AND THE DETROIT MERCHANTS' AND MANUFACTURERS' EXCHANGE v. THE GRAND TRUNK RAILWAY OF CANADA AND THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.

Complaint filed December 19, 1887.—Joint Answer filed February 16, 1888.  
—Postponed by Parties.—Heard July 31 and August 1, 1888.—Decided October 22, 1888.

1. When freight, for example grain, is hauled to the seaboard for export, or to New England points, from the northwestern states and territories of the American Union; or when freight is hauled from the seaboard, or New England points, to the northwestern states or territories through the cities of Detroit and Chicago, the rule invoked by the petitioners in this case as a basis of relief, namely, that an estimated portion of this through rate as between the points of origin of the freight and Detroit, must not be lower in proportion to distance than the rate upon the freight from such points of origin destined to Detroit, is one that cannot be sustained.
2. Rates must be relatively fair and reasonable as between localities in essential respects similarly situated, not according to any rule of mathematical precision, but in substance and in fact, having regard to the geographical and relative positions of the localities, so that one will not be favored to the unjust prejudice of the other.
3. Where a system of rates is made by a number of carriers covering a widely extended territory which seem to be reasonable in themselves and relatively fair, so far as the evidence in this case shows, the Commission will not order them to be changed at one important point, thereby rendering other changes unavoidable at a large number of other points, and throwing the rates of the entire system into confusion and unsettling values, unless a case arises in which it is necessary that this should be done in order to enforce compliance with the law and to reach the ends of substantial justice.

*Alonzo C. Raymond* and *Alfred Russell*, for Complainants.

*E. W. Meddagh*, for Grand Trunk Railway Company of Canada.

*Frank Loomis*, *Henry Russell*, and *Ashley Pond* for New York Central and Hudson River Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner*:

The complaint in this proceeding claims that Detroit is unjustly discriminated against by the defendants in making

their rates on shipments originating at or destined to that city 78 per cent. of the Chicago rate on east as well as west bound freights, when it is insisted that taking into consideration the distance and the geographical position of Detroit, this percentage should be 70 per cent. of the Chicago rate. It is further claimed that Detroit is unjustly discriminated against by the defendants, because the percentage of the through rate on freight passing through Detroit on east and west bound shipments originating at Chicago, or points west or northwest of Chicago, and destined to the seaboard at New York, or New England points, or originating at New York, or New England points, and destined to Chicago, or points northwest of Chicago, is not as high according to length of haul for equal distances, as it is on freight originating at Detroit, and destined to points named, or originating at the points named and destined to Detroit.

The freight rates of the railroads in all sections of the country to which this complaint relates, both east and west bound, are based on the rate from New York to Chicago, and for convenience of calculation that rate is represented by the unit of 100. All the stations in these sections of the country take their percentage of the rate approximately and relatively, according to distance from the point of origin of the freight, to its destination. A few illustrations will show in brief how these rates are made. Suppose the rate on first-class goods from New York to Chicago to be 75 cents, then the rate to Detroit would be 78 per cent. of 75 cents, or 58.5 cents. Suppose the rate from Chicago to New York on grain to be 25 cents, then the rate from Detroit would be 78 per cent. of 25 cents or 19.5 cents; and so by a simple and easy process the calculation is made upon all the articles of the tariff at each of these stations. This widely extended system of freight rates is one that has been the result of long experience in the operation of railroads, after numerous rate wars and fierce competitive struggles. They have these evidences of reasonableness; and in addition to these, whatever inferences may naturally arise from the fact that they have been generally acquiesced in as reasonable by the great com-

munities and sections of the country in which they exist, since the Act to regulate commerce was enacted, no other complaints of their unreasonableness than this having been made to the Commission. Immediately preceding the time when the Act to regulate commerce went into effect, this system of rates was so adjusted by the carriers as to comply, as they supposed, with the provisions of that statute. Under this system "the aggregate" of the rate of the long haul over the same line, in the same direction, of like freight, under substantially similar circumstances and conditions, is believed in every instance to be greater than the aggregate for the short haul.

The New York Central and Hudson River railroad extends from New York to Buffalo, and the Grand Trunk railway of Canada extends from Buffalo to Chicago via Detroit. The distance from New York to Chicago by the defendants' lines by way of Detroit is 967 miles. The distance from New York to Detroit by the same line is 679 miles. The distance from Chicago to New York by the Pennsylvania railroad's lines is 920 miles. The distance from Chicago to New York by way of the Lake Shore and Michigan Southern and New York Central is 981 miles. The distance from Chicago to New York by the Baltimore and Ohio railroad is 1,042 miles. These are each and all long competitive lines on east and west bound business from and to the great sections of the country in which these rates exist, and from and to the seaboard. But the Pennsylvania being the shortest route, and therefore presumably able to give the quickest and cheapest service, makes the rate according to the rule which is usual upon this subject among the carriers when not engaged in rate wars, and the others accept it.

The percentage of rates on east-bound freights at Detroit prior to the enactment of the Act to regulate commerce for many years fluctuated considerably. On the 13th of April, 1876, these percentages were made 85 per cent. of the Chicago rate, and this continued until June 23, 1879, and they were then made 81.5 per cent. of Chicago rate. The percent-



age of 81.5 per cent. continued to be the rate until April 14, 1880, when it was reduced to 75.5 per cent. of the Chicago rate; and this continued to be the rate until June 1, 1883, when it was increased to 78 per cent. of the Chicago rate. The percentage on west-bound freight at Detroit was 70 per cent. of the Chicago rate for many years prior to 1883, and on March 10, 1886, this was advanced to 78 per cent. of the Chicago rate. Since the 10th of March, 1886, the percentage of the Chicago rates on east as well as west bound freights at Detroit has been 78 per cent.

The city of Detroit is a large and prosperous city of over two hundred thousand inhabitants and very advantageously situated for the purposes of commerce. It has an extensive and growing trade, and both rail and water facilities and rates. During a period of many years it has been extending its business connections into adjoining States, as well as in the State of Michigan. The opening of the Wabash system of railroads into Missouri and the west increased very largely the commerce and business of Detroit in the grain trade from Northern Indiana, Southern and Middle Illinois, Northern Missouri, Kansas, and Iowa; but prior to that time, as well as since, the city of Detroit, owing to its superior location, its systems of elevators, and its railroads and water lines, has been a large market for cereals of this description, as well as for general traffic. As a grain market, it now seeks to compete still further in a large area of territory with Chicago, which has long been and still is the greatest grain market in America, or in the world, with the most extraordinary and extensive facilities for the handling and marketing of freight of this character, and the center of the greatest systems of grain-carrying railroads on earth. Prior to the enactment of the Act to regulate commerce, large shippers and dealers of Detroit enjoyed in an extensive way the benefits of "special rates" and "rebates," such as usually existed in large trading centers of the country and which it was the object and purpose of that statute to prohibit.

According to the testimony of some of these large dealers,

Detroit, while this condition of things existed, was prosperous, but now is unable to compete with Chicago as it could formerly, and its trade is languishing. This is not the first instance in which the reasonableness of rates which are general, public, open and equal to all classes of shippers, has been sought to be judged by the rates which formerly were secretly reduced by heavy rebates to favored individuals. The impossibility of making a fair test of comparison in that way is manifest. Notwithstanding these strong expressions as to the bad effects of the existing rates at Detroit, the general result of the testimony put it entirely beyond question that this city is highly prosperous, and that its transportation facilities and the industry and the energy of its traders and manufacturers, practically exclude the competition of Chicago over a section of the country embracing the larger portion of the State of Michigan, and enable them to extend their competition in general trade, as well as in agricultural products, very largely into other States.

We consider first the question of grain, as that is made the subject of chief complaint in the operation of these rates. The course of grain in the north and northwest is that it seeks eastern markets and the seaboard. Railroad facilities as well as the water lines upon the Great Lakes and the Erie canal, have been adjusted and arranged to enable grain to find these markets at the minimum of cost, with the utmost expedition, and under conditions of the highest competition. The purpose of these transportation facilities has been to supply an immense domestic demand, as well as a large export business. Grain shipped from the west or northwest by these railroads or water lines in connection with the railroads, as the case may be, goes to eastern markets to supply the domestic demand, and also to the seaboard in large quantities for export, chiefly through the ports of New York, Philadelphia, Boston, Baltimore, Portland and Montreal. Every appliance that can cheapen its transportation in these long hauls is resorted to. It is transported for the most part in full train-loads. It goes as far as possible exempt from

elevator, switch and track charges at local points, because of the competition that surrounds it and the necessity that exists for getting it to these far-distant and foreign markets at the lowest possible rates and upon a margin of some profit to producer or dealer. It goes by great rival lines in Canada, competing directly for the business with those in the United States.

The question is then presented whether upon such freight as this, starting, as the case may be, from Dakota Territory or the States of Nebraska, Minnesota, Iowa, Wisconsin or Michigan from the northwest, and passing through Chicago and Detroit for the seaboard, or on its way to eastern markets, usually with no change of cars in either instance, at an exceptionally low rate of freight in consequence of the long haul, stripped of elevator, switching, and track charges at local points, as far as this can possibly be done, the charges upon it pressed down to the lowest point by competition, carriers can charge no less upon an estimated portion of the through rates between points of origin of the freight and Detroit, or between Chicago and Detroit, than is charged upon the freight originating at either one of these points of origin, and destined to Chicago or Detroit. We have bestowed upon this subject the most careful consideration, and the conclusion that we have reached is that no such scale of comparison is just or can be sustained.

There is nothing in the Act to regulate commerce which requires that an estimated portion of such a through rate, under such circumstances and conditions, should be the same as is required on freight between intermediate stations. The circumstances and conditions surrounding the service performed, and which enter into, and control its performance, are substantially dissimilar. The substantial elements that make up each service are different. The service rendered in each instance by the carrier is substantially dissimilar. It is not a "like service." The length of haul, the methods of transportation, the fierce competition for the business, the volume of the traffic, are all controlling factors in making the

cost of the service largely less on the long through haul to the seaboard, or to eastern markets, as compared with the short haul to or from a comparatively near and intermediate city. The service in each instance is a unit. That unit in the case of the long haul cannot be split up with any justice or fairness so as to say that less is charged, for example, upon that portion of it between Chicago and Detroit than is charged upon a shipment over the same line originating at Chicago and terminating at Detroit. Each is a separate, entire, and distinct service, and for the purposes of any just comparison cannot be apportioned in this manner. The rate in each instance is an "aggregate" rate, and it is the "aggregate" rate, as such, with which the statute deals.

Substantially the same considerations and upon the same grounds apply with equal force to west-bound freight on the long through hauls from eastern points or seaboard cities, destined to points in the far west and northwest, and in reaching which the carrier has traveled but a small part of his journey with the freight when he has passed through Detroit. In each instance it is not a service of preference to mere individuals, or localities, but it is in a very large part, the through carrying trade of the continent; and to hamper it with the delays, charges and expenses incident to greatly shorter hauls between intermediate points, where substantially very different conditions exist, would bring fatal calamity upon the commerce of the country. There could be no greater perversion of the letter and spirit of the Act to regulate commerce than to construe and administer that statute as requiring that for such substantially different kinds and grades of service performed under substantially different circumstances and conditions, the compensation of the carrier must be exactly the same in proportion for some designated portion of the through long haul, that is proportionally charged over some equal distance on freight originating at one intermediate station and transported to another selected for the purposes of comparison on the same part of the line along that long through haul.

A most important principle in railway transportation, one

that can never be justly overlooked, and which we have had occasion several times to enforce, is that of the relative equality of rates as applied to cities, towns and localities. The Act to regulate commerce provides for, and requires this, and before the enactment of the statute carriers recognized the principle and professed to act upon it. Mathematical equality of rates according to distance can rarely, if ever, be attained, because the precise distance to these cities, towns, localities, as the case may be, upon different and near competing lines from the points of origin or destination of the freight are never exactly the same, but it often occurs that they are relatively so. This being true, the conditions of justice are fulfilled in giving each of them the same rates. In this way prejudice to one and preference to another is avoided. Wherever cities and towns are relatively so situated with reference to transportation facilities, it is not enough that the rates to them should be reasonable in themselves, but it is necessary that they should be relatively fair and just to all of them. An instance of this is seen in the equal rates given by the competitive carriers to the cities of Detroit and Toledo.

In the consideration of a question like the one before us it is necessary to bear in mind that a change of rate at one point requires a change at others also. Relative rates cannot be changed at Detroit alone; if they could, its merchants and dealers might obtain much benefit from having the prayer of this petition granted. But change there means change, by the application of the like principle, at Port Huron, Toledo, Fort Wayne and in fact, the whole interior. It means change, also, at Chicago, because a similar reduction would have to be made by the application of the same principle there. Chicago is no more the end of the line in respect to large classes of business than Detroit, and in the end it would probably be found that relatively, as well as actually, the city of Detroit now has every advantage which it would have as against the competition of Chicago, if the changes sought by the petition were made at Detroit. Such a change if made, while it would not benefit Detroit in the

manner supposed in the petition, would necessarily, as we have shown, involve a complete change in the rates all over a large territory of the northwest, and would probably result in a widespread unsettling and confusion of rates and values during a great part of the business season, when it is to the interest of shippers as well as carriers, that these rates and values should remain stable, except so far as they may require some necessary and unavoidable correction.

If, however, all the insuperable objections which we have mentioned did not exist, and if, in point of fact, the change of rates sought in this petition on east and west bound freight were made at Detroit, then, according to the same rule, Toledo would be allowed lower rates than Detroit on corn and oats from the southwest, embracing Northern Indiana, Middle and Southern Illinois, Northern Missouri, Kansas, Nebraska and Iowa. It would also be true that Chicago, being 288 miles nearer than Detroit to the great grain-growing region of the northwest, according to the same rule, would receive correspondingly lower grain rates.

We have carefully considered all the evidence in relation to the terminal facilities at Chicago and Detroit, and it does not affect or change our conclusions as above stated. On all the evidence we find this complaint is not sustained, and it is therefore dismissed.

## IN THE MATTER OF THE TARIFFS OF THE TRANS-CONTINENTAL LINES.

Filed October 24. 1888.

Rates that are just and reasonable from selected manufacturing points, through the entire territory east of the Missouri river and west of the Atlantic seaboard, are *prima facie* just and reasonable from all other points in the same territory.

A tariff naming a rate from one locality lower than that enjoyed by its neighbor, when the circumstances are the same, tenders a preference or advantage to the first; and when any shipper is damaged by the exaction of an additional burden the preference becomes undue and unreasonable, unless it can be justified upon some sound and substantial ground.

Common carriers are under obligation to take all descriptions of ordinary traffic from all points, and it is right that the rates should be known and announced publicly in advance of the offering of traffic.

Under the Act to regulate commerce shippers are not to be put in a position of subserviency to common carriers, nor required to ask for rates, but are entitled to equal and open rates at all times.

Discriminations are made and undue advantages are given by the special tariffs in question, in giving different rates to places named and those not named; to manufactured articles named and those not named; to jobbers at places named and those not named; to manufacturers and to jobbers and other dealers.

WALKER, *Commissioner*.

The case of *Martin v. Southern Pacific Company et. al.*, 2 I. C. C. R. 1, presented the question of whether a tariff of rates from San Francisco to Denver, higher than the rates charged at the same time over the same line from San Francisco to Kansas City, was justifiable under the fourth section of the Act to regulate commerce. The opinion of the Commission, filed May 17, 1888, discussed this question as involving "the entire subject of relative rates as between shorter and longer hauls on all the trans-continental lines." The conclusion reached was that in the case stated no fact was shown to exist which justified the greater charge for the shorter haul.



On September 1, 1888, an entirely new system of making rates upon the trans-continental lines was put into effect. The new tariffs were exceedingly different from the system previously in force; the changes made were many and radical, affecting not only all joint tariffs and the rates to and from terminal or competitive points, but also the rates to and from local and intermediate points on all the lines. In so great a mass of new matter affecting so complicated a subject, promulgated at one time, and at the last completed and issued in some haste, it is not surprising that irregularities should be found to exist and that some of the indirect results of the changes made were unexpected.

While this Commission was not responsible for the construction or practical operation of these tariffs to any extent beyond that indicated by the above statement of its decision in the Denver case, and had no opportunity of inspecting any of them before they were put into effect, nevertheless it clearly appears that their formulation is the result of an honest effort to revise the trans-continental tariffs in conformity with the provisions of the Act to regulate commerce; that the carriers have undertaken this important matter in good faith; and that the immediate result aimed at has been directly in the line indicated by the Commission. Whatever modification of detail may be expedient or necessary, the general plan on which the new tariffs have been framed represents a long step in advance, as compared with the irregular and in many respects illegal methods previously in use.

Eighteen railroads, composing the Trans-Continental Association, so called, and representing an aggregate length of about forty-thousand miles, have united in the new tariffs. The Canadian Pacific is one of them. Differential rates are provided in its favor, under which its through tariffs are slightly less than the through rates of the more direct lines which are situated wholly within the United States.

One of the most important changes made is in respect to the classification of freight. The Pacific Coast classifications, both east-bound and west-bound, have been discarded; so far as the transportation of freight is governed by class rates the Western classification alone is used. This change en-

ables a comparison to be easily and accurately made between the rates charged on the various classes at different points, and the exceptions which remain are only such as appear in the Commodity lists containing articles upon which rates different from the class rates are named. The establishment of a common classification to which all rates are now referred upon the tariffs issued by the trans-continental lines, is a long step in the direction of eliminating the injustice which has heretofore existed in the treatment of their local traffic.

The series of tariffs so prepared and issued is numbered from 8 to 16, inclusive. No. 10 of the series is the general basis of the new system. The rates named in this tariff apply to both east and west-bound business, between Pacific coast common points and the several groups of eastern points named below, as follows:

BETWEEN PACIFIC COAST COMMON POINTS  AND	First Class.	Second Class.	Third Class.	Fourth Class.	Fifth Class.	Class A.	Class B.	Class C.	Class D.	Class E.
Missouri River Common Points, also St Paul & Minneapolis, Minn., & Galveston & Houston, Texas.....	3 50	8 00	2 50	2 00	1 75	1 75	1 55	1 25	1 10	1 00
Mississippi River Com- mon Points, Dubuque, Ia., to New Orleans, La., inclusive .....	3 70	3 20	2 60	2 05	1 80	1 82½	1 62½	1 30	1 15	1 05
Chicago Milwaukee and Common Points .....	3 90	3 40	2 70	2 10	1 85	1 90	1 70	1 35	1 20	1 10
Detroit, Toledo & Com- mon Points .....	3 95	3 45	2 75	2 15	1 90	1 95	1 75	1 40	1 25	1 15
Buffalo, Pittsburgh and Common Points, and Points east thereof and west of Atlantic sea- board Common Points.	4 00	3 50	2 80	2 20	1 95	1 95	1 75	1 40	1 25	1 15

Special east-bound rates are named upon fifty or sixty enumerated commodities, upon about half of which car-load and less than car-load rates are separately given. These commodity rates are lower than the rates which would be

made by applying the above class rates to the articles in question.

This long list of articles, chiefly products of California, illustrates one of the difficulties which exist in attempting to frame a universal classification, to be applied in all parts of the country. Rates which have not been regarded as unreasonable in the large territory in which the Western classification is employed on both through and local business, are so nearly prohibitory upon shipments from California and Oregon to the east, that large reductions are made in order to secure the movement of the traffic. A few of the reductions so effected on east-bound rates from the Pacific Coast to the Missouri River, are given as illustrations:

Articles.	Class rate.	Commodity rate.
Beans.....C. L.	\$1 75	\$1 00
Borax..... do.	2 50	1 00
Canned Goods..... do.	1 75	1 10
Dried Fruits..... do.	2 00	1 40
Chicory.....	2 50	1 60
Chocolate.....	3 50	2 00
Canned Fish.....	1 75	1 00
Honey, strained.....C. L.	2 00	1 20
Wine..... do.	2 50	1 25
Lumber ..... do.	1 25	50
Raisins..... do.	2 50	1 40
Tea ..... do.	3 50	1 55

West-bound commodity rates are also given on Tariff No. 10 upon some fifteen or twenty articles, which are all produced to some extent west of the Missouri river.

The several lines, by circulars and instructions issued upon each, have carried into execution the general plan upon which the present system was devised, to wit: that no more shall be charged for a shorter than for a longer haul upon business which is handled under this tariff, the result being that so far as No. 10 is applied, no violation of the fourth section of the Act to regulate commerce is permissible at local and intermediate points on either east or west-bound business. This is true not only in respect to the class rates but also the commodity rates above described.

The class rates in effect from San Francisco to Denver remain as before, and are now considerably less than the class rates to the Missouri river; the latter rates, though higher than formerly, are not so high as the rates formerly made to and from points in Kansas, Nebraska, etc. While the through rates as a whole are advanced, there are thousands of points west of the Missouri river which are now receiving rates lower than were ever before given them, and which are made in order to conform to the rule prescribed in the short-haul clause of the Act to regulate commerce.

So far as the terms of the decision in the Denver case extended they have been complied with by the carriers. The change thus accomplished amounts almost to a revolution. It will not be surprising if friction is developed in quarters where the new schedules work oppressively to local interests established before the passage of the act, but the new system was clearly required by the language of the law, and it can now be fairly and thoroughly tried. The opinion of many sagacious men will be at fault if in the long run the results do not prove highly satisfactory both to the roads and to the general public.

The method which was adopted for reconstructing the tariffs west of the Missouri river unfortunately gave rise to much complaint at points between the Missouri river and the Atlantic Ocean. In tariff No. 10 no class rates were stated for traffic from ocean to ocean, which is governed by Nos. 8 and 9 exclusively. No. 8 is a west-bound tariff and No. 9 an east-bound tariff, in which rates are stated in cents, to be applied on each article enumerated, and all articles are separately named. These seaboard rates do not differ very materially in amount from those heretofore in force between the Atlantic and the Pacific coasts, while the rates from points west of the Atlantic coast as far as the Missouri river have been quite materially increased.

The justification alleged for the infringement upon the short-haul principle of the Act to regulate commerce found in tariffs Nos. 8 and 9, is the water competition which is met at the seaboard for the same traffic. The following statement is made on the part of the carriers in explanation:

“These rates are established with the idea of fairly competing with the clipper ships for the transaction of business between Atlantic seaboard cities and the Pacific coast. Necessarily the rates were made low but they did not establish the maxima to be charged on like commodities from the Atlantic seaboard to points on the trans-continental lines east of the Pacific coast. In that respect the Trans-Continental Association availed itself of the opinion in the Louisville & Nashville case, wherein the Commission decided that ‘the existence of actual competition which is of controlling force in respect to traffic important in amount may make out the dissimilar circumstances and conditions entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer, when the competition is with carriers by water not subject to the Interstate Law. The competition in this instance is both actual and of controlling force, inasmuch as there are several lines of clipper ships, and they are able to, and doubtless would, carry most of the business, were their competitors not to approximately meet the rates thus made. Furthermore the traffic is important in amount, seeing that the seaboard business constitutes full 40 per cent. of the revenue derived from traffic carried by trans-continental lines to the Pacific coast. If the ships were to take business destined to an interior point east of San Francisco or Sacramento, the freight would then be subject to the local rate of the Southern Pacific Co. from the coast to destination; therefore the competition in such event begins at the Atlantic seaboard and ends at the Pacific coast.”

Tariff No. 8 on west-bound business from the Atlantic to the Pacific coast giving commodity rates in most cases considerably less than the rates on No. 10, an effort was made to ameliorate its operation in respect to west-bound traffic from interior points by issuing a series of commodity tariffs numbered from 11 to 16, each of which named certain articles upon which rates lower than those given in No. 10 were made on west-bound business to the Pacific coast, from the various points specified, and which were not made from other

points. They bore this notation: "Rates as provided herein will only apply upon such articles and from such points as are specifically mentioned." As related, however, to the vast number of articles shipped to the Pacific coast from interior points and the vast number of points participating in such traffic, the exceptions made in these special tariffs were relatively few. Their effect upon the business of inland cities was immediately noticeable; in Chicago and St. Louis particularly much opposition and active remonstrance were excited. This was met by issuing a series of supplements increasing the number of articles, and adding to the points from which commodity rates were allowed.

Meanwhile the various tariffs, circulars and letters of instruction which were issued by all the lines, were carefully examined by the Commission. The working of the new system was observed and it became obvious that certain changes were necessary in order to make it practically successful. A conference was invited between the Commission and representatives to the trans-continental lines, which was held at the office of the Commission in Washington on October 16th, at which time the subject was considered, and additional information was received which the Commission had not been able to obtain by an examination of the papers and by correspondence with shippers and others. In the course of this interview the Commission took occasion to lay before the representatives of the roads its views upon certain features of the tariffs in question. It is proper that those views should now be made public. In substance they were as follows:

#### FIRST.—EAST-BOUND TRANS-CONTINENTAL TARIFFS.

East-bound rates are given in No. 9 to the Atlantic coast on commodities only, and in No. 10 specified class rates and over fifty commodity rates are given to interior points.

A comparison of the east-bound commodity rates on the two tariffs shows some anomalous results. In many, in fact in most cases the rates are identical; in but very few cases are the rates to interior points higher than the rates to New York City, liquors being the principal if not the only exam-

ple. The discrepancy in respect to them is not great, and it is a fair query whether the Atlantic coast rate would not bear a sufficient advance to bring them into line, or whether the rates to interior eastern points could not be reduced to the same extent.

Another class of cases indicates a want of relation between the two sets of tariffs; for example:

Articles.	San Francisco to—	
	Buffalo.	New York.
Matting, China, 15,000 lbs., C. L.....	1 20	1 60
Nuts, edible, C. L.....	1 00	2 00
Sauerkraut, C. L.....	1 00	1 80
Garden seed, boxed, L. C. L.....	2 00	2 50
Tanks, iron, empty, returned.....	1 00	1 40
Macaroni, C. L. ....	1 40	2 00

It is obvious that in these instances a shipper would make money by routing his goods to Buffalo and then at local rate to New York. Other inconsistencies will be found under vegetables, lumber, barley, bark, etc.

A comparison of the commodities in No. 9 with the class rates to Buffalo under No. 10, does not disclose many articles of importance on which the carriers are protecting themselves against east-bound clipper-ship competition, by charging rates materially less to New York than to interior points. The leading articles shipped from California (except sugar, which is not brought largely to points east of the Missouri river) appear to be covered by the commodity list in No. 10. As to the articles of minor importance, very many of them bear the same rate to New York that is given to Buffalo, under the Western classification. Some bear a somewhat higher rate; on others the rate to New York is lower. California products have, however, been so thoroughly covered by the commodity rates in No. 10 that these examples cannot be of great consequence, and the policy adopted has evidently been such that if shipments in large quantities were expected to interior points, the commodity list in No. 10 would be extended accordingly.

There are also in No. 9 quite a number of articles, products



of California or imported from Japan, China, etc., which are not found at all in the Western classification. Some of these are found in No. 10 also, and if any general principle is to be adopted the same course should be taken with the rest, or the classification should be amended.

It should be observed moreover that in some of the instances in which, as the matter is now left, a higher rate to interior points than to the Atlantic coast exists, the difference is unreasonable, *e. g.*, Beeswax, 1.80 to New York, 4.00 to all interior points. In a case like this shippers of course would route their goods to New York and return at local rates. It is not perceived, however, that any great amount of valuable traffic from the Pacific coast is charged higher rates to interior points than to Atlantic coast points, while it is apparent that the tariffs were prepared in haste and are in considerable confusion.

So far as this subject has been examined no important reason appears why the east-bound business could not be thrown into a single tariff sheet, giving commodity rates to all points, even or progressive, upon such articles as it is judged expedient to reduce from the Western classification, and class rates upon the remainder. This would substantially establish the full operation of the short-haul principle upon east-bound business.

Upon this last suggestion it must not be forgotten that the proportion earned by the trans-continental lines on business to the Mississippi valley is considerably higher than that which they receive on business to the Atlantic seaboard, at even rates.

#### SECOND.—WEST-BOUND TRANS-CONTINENTAL TARIFFS.

No. 8 of the series is a west-bound commodity tariff covering all business from the Atlantic coast to the Pacific coast. Additions and amendments have been made to the first issue by supplement. The list of articles has no relation to the Western classification, either in nomenclature or arrangement. In fact the difference in language is so great that it is frequently difficult to determine what rate articles named in No. 8 would bear under No. 10. The list of articles in No. 8 is

apparently a perpetuation of the old Pacific Coast West-Bound classification.

The last-named classification, however, was applied upon business from the Missouri river and all points east thereof. The effect of the new scheme is to apply the Western classification for the first time on business originating between the Missouri river and the Atlantic seaboard, destined for the Pacific coast. The grading of the Western classification is decidedly higher than that of the old Pacific Coast West-Bound classification. The result therefore is a very material advance in rates from all the interior territory upon the business in question. Meanwhile from the Atlantic seaboard the rates have not been greatly changed.

This situation has been further complicated by the issue of a set of tariffs numbered from 11 to 16 inclusive, which give commodity rates from various named interior points to the Pacific coast, on long lists of enumerated articles, the rates so named being almost invariably the Atlantic seaboard rates. Upon articles not enumerated in these special lists the changes have been such as to throw everything out of line and into confusion. There is no fixed standard of proportion. On a few articles the Western classification, as applied in No. 10, makes lower rates than No. 8. In most cases, however, the rates under No. 10 are so much higher than the rates under No. 8 that they are subject to the obvious objection that they exceed to a considerable extent the combination rate made by shipping east locally to the seaboard and return on No. 8 to the Pacific coast.

The system is subject to the further objection of giving rates to favored points only, and suggesting that rates will be made to other points on application showing that some considerable amount of traffic will follow. This practice is directly opposed to the fundamental principles of the Act to regulate commerce.

By the class rates of tariff No. 10 under the Western classification, which would govern at all points not named in the commodity lists, the charges would be considerably higher than at the points which are specified. Why one rate should be named on hammers and hatchets from Cohoes and an-

other from Troy or Schenectady; why windmills should have a certain rate established from forty-six specified points named in the various tariffs of the series, to the exclusion of all the rest of the United States, presents a question to which no answer can be found in the tariffs themselves. It is no doubt, however, the fact that the enumerated places as to each commodity are the places where the respective articles are chiefly manufactured for California consumption. In fact it has been semi-officially announced that manufacturing points where important shipments of each commodity have been heretofore received for the Pacific coast have been selected and named, and that it is the intention to supplement these lists with new points when any important amount of traffic in the articles named, or perhaps in other articles, shall be offered for shipment by manufacturers or producers. The theory on which this has been done is by no means clear. If these rates are just and reasonable from the selected points, ranging as they do through the entire territory east of the Missouri river and west of the Atlantic seaboard, it would seem to follow that they would likewise be just and reasonable from all points in the same territory.

If no traffic now exists it certainly can do no harm to the carriers to announce the rate. They say that they are ready to make the rate in case traffic is offered. A tariff naming a rate from one locality lower than that enjoyed by its neighbor, when the circumstances are the same, tenders a preference or advantage to the first, and when any shipper is damaged by the exaction of an additional burden the preference becomes undue and unreasonable, unless it can be justified upon some sound and sufficient ground.

Further than this, common carriers are under obligation to take all descriptions of ordinary traffic from all points, and it is right that the rates should be known and announced publicly in advance of the offering of traffic. Even if there is no reasonable prospect that traffic will be tendered there is no reason why the schedules should not be given the broadest possible field. Under the existing system of almost universal joint tariffs and rates it would be much less burdensome to carriers in the matter of expense, and much less perplex-

ing to everybody interested, for the tariffs to state, for example, that the rate on wind-mills is \$1.40 from all points, than to go through with long lists of detail to arrive at the same result.

Moreover, there appears to be a feature which is inherently vicious in the system above described, for its tendency and effect are to put manufacturers and dealers at the mercy of the carriers. The Act to regulate commerce contemplates that an end be put to the practice which previously prevailed, under which the shippers were required to ask the carriers for rates. It requires that the reverse practice should be pursued and that known and equal rates should always be announced to shippers at every point. The patron of the common carrier is not to be put in a position of subserviency to the road; on the contrary he is entitled to equal privileges with his competitors, at all times open and free; not as a matter of favor or to be granted upon petition, but as a right under the franchise granted to the common carrier and under the law. As the case now stands no man can manufacture hammers or hatchets, wind-mills, or hundreds of other articles for the California trade, except at the designated points from which traffic is announced as to be taken at special rates. What right has a common carrier to keep this hold upon merchants and manufacturers? Where is its power to say to the people of the United States, as these tariffs practically do, that if any citizen desires to start a new industry for the California market he must ask the permission of the Trans-Continental Association? It is not easy to see what interests the carriers seek to promote by maintaining this policy of exhibited power; the result of it is that they are thus enabled to say who shall ship to California and who shall be excluded from shipping.

Probably this view of the case did not occur to the framers of the tariffs, but they necessarily work unjust discriminations and give undue advantages, to wit: between places named and those not named; between manufactured articles named and those not named; between manufacturers, and jobbers and other dealers; between jobbers at manufacturing

points and jobbers at other points; and generally, in attempting to select specified exceptions to the general exception which it is sought to make to the rule of Section IV, a violation of Section III is wrought.

Moreover, the arrangement has not met the approval of the trunk lines and the roads of the Central Traffic Association, which are unwilling to charge more on business from interior points than from the Atlantic coast, and they have refused to participate in the system.

No other method seems to be practical except to extend No. 10 to the Atlantic coast, to cancel Nos. 11 to 16, and to publish a commodity list which shall be fully applicable at all points east of the Missouri river. Even this would result in some increase of rates upon some articles from interior points, and upon a class of business in which the western lines are more profitably interested than upon the through business, for as distance diminished the rate per ton per mile increases.

No intelligent examination of the tariffs and circulars can be made without observing the fact that the real object of the system, with all of its complex machinery, is to establish a maximum rate for intermediate business which is contained in tariff No. 10, and within this limit to provide for combination rates to all Pacific slope points east of the west coast terminals, on business from the Missouri river and all points east thereof.

This system is better than the old practice in this: that now tariff No. 10 is to be used as a maximum, to control the unreasonable operation of such combination rates, so that the rates to the points in question must be considerably less oppressive than in the past. It will not do, however, for the carriers maintaining this system to claim that they have brought their lines wholly into conformity with the rule of Section IV of the Act to regulate commerce, upon west-bound business.

It should further be observed that this system can be worked much more easily, by combining all the west-bound

commodity tariffs from points east of the Missouri river upon a single sheet, as above suggested, than by the cumbrous system of seven different tariff sheets, containing from ten to twenty pages each, applicable to different territories, and discriminating intensely among different points in their respective territories. As to the legality of the practice, no opinion is now offered; its operation can be better understood by experience.

As a result of the aforesaid conference, and in compliance with the views of the Commission as then expressed, the Trans-Continental Association, by its circular taking effect October 23d, suspended tariffs Nos. 11 to 16, inclusive, and announced that west-bound tariff No. 8 and its supplements will govern on all west-bound freight traffic destined to Pacific coast terminals and originating at Atlantic seaboard common points and common points west thereof and east of the 97th meridian of longitude.

The effect of this change is to establish the principle that no higher rate can be charged to Pacific coast points on any articles from points between the Atlantic Ocean and the Missouri river than is charged on the same articles from points situated on the Atlantic seaboard.

Meanwhile tariff No. 10 remains in effect as a maximum in all cases, and to and from all points upon all the lines.

It is believed that still further revision and corrections may profitably be made, in accordance with some of the views above suggested.

**JAMES C. SAVERY & COMPANY, DOING BUSINESS UNDER THE NAME OF THE AMERICAN EMIGRANT COMPANY v. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY; THE NEW YORK, WEST SHORE AND BUFFALO RAILWAY COMPANY; THE NEW YORK, ONTARIO AND WESTERN RAILWAY COMPANY; THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY; THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY; THE PENNSYLVANIA RAILROAD COMPANY, AND THE BALTIMORE AND OHIO RAILROAD COMPANY.**

**Heard at New York, February 28 to March 2, 1888; at Elberon, N. J., July 11 and 12, 1888.—Decided November 9, 1888.**

**The matter of the reception of immigrants at the port of New York having been put by the laws of the State under the control of a Board of Commissioners of Emigration, and that Board having made such regulations as it has deemed desirable for the protection of the immigrants until they are ticketed and put on board railroad trains for their respective ultimate destinations, and the Federal Government, through its legislative and executive departments, having sanctioned the control by the Commissioners of Emigration, the Interstate Commerce Commission has no authority to interfere with their regulations.**

**Not having the authority to interfere directly and control the Commissioners of Emigration, it cannot do so indirectly by inhibiting the railroad companies from carrying out the arrangements made by the Commissioners with them.**

**There is nothing illegal or wrongful in a railroad company making a rate for immigrants as a class, and declining to give the same rate to others for whom different accommodations are furnished.**

**A railroad company which transports immigrants in unfit cars will be required to provide better accommodations, and to ascertain their fitness the Commission will make its own inspection.**

**The rates complained of in this case as excessive were voluntarily reduced pending the proceedings.**

*Blair & Rudd*, for complainants.

*Frank Loomis*, for New York Central & Hudson River Railroad Company.

*Ashbel Green*, for New York, West Shore & Buffalo Railway Company.



*J. B. Kerr*, for New York, Ontario & Western Railway Company.

*J. A. Buchanan*, for New York, Lake Erie & Western Railroad Company.

*M. Taylor Pyne*, for Delaware, Lackawanna & Western Railroad Company.

*John Scott, James A. Logan, E. Randolph Robinson and Osborne E. Bright*, for Pennsylvania Railroad Company.

*J. K. Cowen*, for Baltimore & Ohio Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman* :

The complaint in this case is by "James C. Savery & Company, citizens of the United States, doing business in the city of New York, under the name of the American Emigrant Company, and as successors of the American Emigrant Company of Hartford, Conn.," and is against the New York Central and Hudson River Railroad Company; the New York, West Shore and Buffalo Railway Company; the New York, Ontario and Western Railway Company; the New York, Lake Erie and Western Railroad Company; the Delaware, Lackawanna and Western Railroad Company; the Pennsylvania Railroad Company, and the Baltimore and Ohio Railroad Company.

The complaint charges that the defendants, being common carriers of passengers subject to the Act to regulate commerce, have been and are guilty of violating the provisions of the last clause of the first section of said act in that each of them has continuously since the first day of April, 1887, exacted unjust and unreasonable charges for the carriage of emigrants and their baggage from the said city of New York to the said city of Chicago, and to other points and places in the States and Territories west, northwest and southwest of the State of New York.

And for the particular grounds and specifications of this charge your petitioners show :

*First Specification.*—That continuously, since the first day

of April, 1887, said several railroad companies have exacted the sum of \$13 for the carriage of each adult emigrant carried by them from New York to Chicago, and a proportionate sum for each adult emigrant carried a less distance, while for each adult emigrant carried beyond Chicago the charge has been increased according to the local second-class rate of the railroads running beyond that point; such exaction being made in pursuance of an agreement or compact existing between all of said railroad companies establishing rates for the carriage of emigrants and their baggage, which rates are unjust and unreasonable because of the character of the accommodations furnished for the transportation of emigrant passengers, said passengers being usually carried by said railroad companies in an inferior kind of cars called "emigrant cars," or in cars fitted with uncomfortable wooden seats, such cars being run sometimes in connection with passenger trains and sometimes in connection with freight trains, according to the convenience of the carrier, and not on any schedule time, and sixty hours being sometimes occupied in making the trip from New York to Chicago, and which rates are unjust and unreasonable because the number of emigrants carried by said railroad companies from New York to Chicago and to other points west of the State of New York is so great (amounting to between two and three hundred thousand annually) as to warrant their being carried at much lower rates, and which rates are unjust and unreasonable because they are largely in excess of the rates at which the said railroad companies have heretofore carried emigrants and their baggage from New York to Chicago and other points west of the State of New York, which former rates the complaint sets out in detail.

*Second Specification.* That continuously since the first day of April, 1887, said several railroad companies have exacted from each emigrant carried from New York to Chicago whose baggage weighed more than one hundred pounds, compensation for extra baggage at the rate of two dollars and sixty cents (\$2.60) per one hundred pounds for the excess over one hundred pounds, which charge for extra baggage is unreason-

able and unjust because it is greater than the charge made by the same carriers for the carriage, between the same points, of extra baggage for first-class passengers, which is carried on express passenger trains, such last-mentioned charge being at the rate of only \$2.40 per one hundred pounds.

The complaint further alleges that each of the said railroad companies is guilty of unjust discrimination, in violation of the second section of said Act of Congress, in this, to wit:

*First Specification.*—That each of said railroad companies in pursuance of said compact between them, sells, at the price of \$13, to recently arrived emigrants who are landed at Castle Garden, New York, tickets entitling the holders to transportation by rail from New York to Chicago, but refuses to sell the same grade of tickets for the same trains to any other person or persons at the same price, or at any price; and also refuses to sell the same grade or kind of tickets at any other place or office than at Castle Garden, New York; and all persons other than recently arrived emigrants who are carried in the same cars with emigrants from New York to Chicago are compelled by each of said carriers to pay for such carriage the sum of \$17, the price of a second-class ticket between said points.

*Second Specification.*—That each of said railroad companies, in pursuance of the said compact between them, has continuously since April 1, 1887, discriminated against emigrants carried by it from New York to Chicago by exacting from them \$2.60 each one hundred pounds of extra baggage carried for them, while it has charged first-class passengers for extra baggage carried for them upon express trains only \$2.40 per one hundred pounds.

The complaint further alleges that said railroad companies have been and are guilty of violating section 5 of said Act of Congress in this, that since April 1, 1887, they have been, and they still are, dividing between them a portion of the aggregate earnings of said railroads, to wit, that portion derived from the carriage of emigrants and their baggage.

This charge was abandoned on the hearing, and the specifications under it are therefore omitted.

The complaint further shows that the said railroad companies have, by their combined action, subjected petitioners to undue and unreasonable prejudice and disadvantage in their business, hereinafter described, in violation of section 3 of said Act of Congress.

*Specification.*—The business of the American Emigrant Company of Hartford, Connecticut, to which company petitioners are successors, which was established twenty-three years ago, has consisted in the sale to emigrants and others of lands situate in the Western States and Territories, and in the establishment of numerous colonies upon such lands, and in disseminating among the common people of various countries of Europe, but especially among the Scandinavians, correct information regarding the newer and more sparsely settled portions of our country, and, in acting as the correspondent and agent of persons residing in foreign countries who were about to migrate hither, furnishing them specific information, purchasing their tickets, providing interpreters and agents to meet them upon their arrival, and rendering them whatever advice and assistance they might need; and in the course of said business the said American Emigrant Company has become favorably known to a great number of foreign-born people residing in every State and Territory of the United States, and a great number of such people have made it their financial agent, entrusting to it sums of money for a great variety of purposes, the chief of which has been the purchase of bills of exchange for transmission to relatives or friends in the old country and the purchase for relatives or friends coming to America of tickets for the journey from New York to their ultimate destination, and also entrusting to it sums of money to be handed to relatives or friends upon their arrival in New York; and have also solicited its advice for such relatives or friends as to the route by which they should travel, and its assistance in procuring for them transportation and whatever else they might need, either in New York or upon their journey; and petitioners in continuing the said business have become the financial agents of a very

great number of said foreign-born residents, who have entrusted to petitioners sums of money amounting, in the aggregate, to hundreds of thousands of dollars annually upon trusts, the performance of many of which is greatly hindered and impeded by the action of the said railway companies herein complained of, among which trusts are the meeting and assisting of emigrants upon their arrival; advising them as to the route to be traveled to reach their ultimate destination; acting for them in securing the most favorable rates possible and in purchasing their tickets; purchasing for them such articles of food or clothing as they might need for their journey, and delivering to them money supplied for their use; and, because of their said compact hereinbefore mentioned, and in pursuance thereof, said railroad companies have refused, and each of them has refused, and they and each of them still refuse, to sell to petitioners emigrant tickets for any purpose whatever, and they have caused the said Commissioners of Emigration to exclude, and to continue to exclude petitioners and their agents and interpreters from said Castle Garden, and have hindered and prevented, and still hinder and prevent petitioners and their agents and interpreters from communicating with or advising, or in any manner acting for or serving emigrants arriving at the port of New York, and have hindered and prevented and still hinder and prevent emigrants desiring to do so from seeing or communicating with petitioners, their agents, and interpreters; whereby petitioners are greatly annoyed, and are hindered and prevented from discharging the duties and obligations they have assumed towards many of their principals and depositors, by reason whereof their business standing and reputation are impaired, their credit is injured, and they are subjected to great prejudice and disadvantage.

All of the defendants answered, but for the purposes of a presentation of the issues, it will be sufficient to state the substance of the answer made by the New York Central and Hudson River Railroad Company. That company by way of challenging the right of James C. Savery & Company to make the complaint, averred that the American Emigrant and Trust Company of Hartford, Connecticut, after an existence of sev-

eral years became insolvent in 1886, and its assets were transferred to the petitioner, James C. Savery, and one Callahan, whereby and not otherwise is the former enabled to describe himself and "Company" as "successors of the American Emigrant Company of Hartford, Connecticut." The defendant denies that there is now any such corporation or joint stock association as the American Emigrant Company, and avers ignorance who the petitioners are, except Savery, and asks that he be required to disclose the names, if any, constituting the "company."

The defendant admits that it is engaged in the transportation of emigrants from the city of New York to the West; avers that its own charges are within limits prescribed by statute in the State of New York, and the aggregate charge made by itself and its connections is reasonable and such as is warranted by law.

It proceeds to state that the subject of the proper care of emigrants landing at the city of New York and at other points of the State of New York and their protection against frauds, impositions, and swindles has been frequently legislated upon in that State; that an act passed in 1847 provided for six Commissioners of Emigration, which Commissioners were authorized to acquire a place for the landing exclusively of emigrants and their baggage arriving at the port of New York, and they have acquired Castle Garden for that purpose, and it is not permitted by the laws of New York that emigrants and their baggage shall be landed elsewhere; that by the same laws said Commissioners are required to designate a place or places in the city of New York for the sale of railroad tickets to emigrants, and to allow every railroad company desiring it to have an agent at the place or places designated, and it is made a misdemeanor to sell or offer for sale such tickets elsewhere, except that any railroad company may sell tickets to any persons at the rates charged to first-class passengers, and may sell tickets at its principal ticket offices to emigrants and other second-class passengers, provided it has at the same time an agent for the sale of tickets at the place or places so designated by the Commissioners.

The answer proceeds to state certain other provisions of

the statute in the State of New York designed for the protection of emigrants, among which is that no person other than an agent of a railroad company, duly authorized in writing therefor, may sell any railroad passage ticket, and such authorized person may not sell any railroad passage ticket excepting at the office designated in his appointment, and the unauthorized sale of a railroad passage ticket is punishable by fine or imprisonment. It states, further, that the said Commissioners of Emigration of the State of New York, by virtue of the authority conferred upon and possessed by them, heretofore designated Castle Garden as the place in the city of New York for the sale of railroad tickets, and that the railroad companies mentioned in the petition, other than the New York, West Shore and Buffalo Railway Company, provided for the sale of railroad tickets at Castle Garden by a joint agent of said railroad companies, and that this respondent, with respect to the carriage of emigrants and their baggage, has and does in all respects conform to, obey, and comply with the laws of the State of New York, and that the other railroad companies named in the petition in like manner conform to, comply with, and obey the laws of the State of New York so far as they are applicable to them respectively.

The answer then sets forth reasons to justify such charges as are made in the transportation of emigrants and their baggage, and avers that the arrangement for such transportation and the service performed in respect thereto are in all respects suitable and adequate. It further says, "on information and belief, that the principal business and chief source of gain heretofore of the so-called 'American Emigrant Company'—the name under which the petitioners say they do business—has been in the vending of the transportation of emigrants to competing and rival transportation companies and obtaining 'commissions' from them, and that the only interest the petitioners have in the matter set forth in the petition and in the relief sought is to be able to resume the same business and to have access to the same sources of profit."

Other answers were equally specific, but did not present



further issues. That of the New York, Ontario and Western Railway Company says as to the complaint of excessive charge on extra baggage that "the cause of complaint, if any cause ever existed, has been removed by the increase of the amount of baggage allowed each adult passenger to 150 pounds, and the reduction of the rate for excess baggage from \$2.60 to \$1.95 for each 100 pounds; which reduction will go into effect on the first day of November, 1887."

All of the answers call attention to the fact that defendants have no authority whatever over the Commissioners of Emigration for the State of New York; that on the contrary their agencies are established in Castle Garden at the request of the said Commissioners, and entirely subject to their direction in all matters pertaining to railroad business; and that in all other matters defendants have no right to control whatsoever.

The answer of the New York, West Shore and Buffalo Railway Company was in the nature of a disclaimer, its road being operated by the New York Central and Hudson River Railroad Company.

When the case came to a hearing it appeared that Mr. Savery was in fact the sole complainant, though he seemed to be doing business under a partnership or corporate name, but as the fact does not affect the merits of the case it is not noticed in what follows.

Upon the issues so made a large amount of evidence was taken by the Commission. The manner in which the emigrant business is conducted by the Commissioners appointed by the State of New York for the purpose was explained by the Commissioners and by such other witnesses as the parties offered for the purpose. It was shown that the circumstances surrounding immigration afforded abundant opportunity for fraud and rapacity of every sort, and that there was not wanting a horde of rapacious persons eager to make the emigrant their prey. As was no doubt truly said by one of the early Commissioners, "their extortions and frauds in all the forms that rapacity could invent or suggest, finally assumed such fearful proportions and became the object of such general abhorrence that legislation for the protection of emi-

grants seemed the only possible remedy. The community finally began to understand that it had to suffer in the same if not in a greater proportion than the emigrants themselves if the latter were not secured from the cupidity of runners and the mercenary attempts of agents."

To remedy the evils the Legislature of New York in 1847 passed an act creating a Board of Emigrant Commissioners, whose duty it should be to supervise emigration and protect the immigrants. The creation of such a body probably had some influence in affording protection, but it was far from being effectual. Most of the immigrants had no knowledge of the English language, and if when they landed in New York they had any definite notions of further destination, they were utterly ignorant of routes and of means of transportation. They were therefore easy prey for any unscrupulous persons who might secure control of their movements while in the city, and for the runners for steamboats and railroads, and it was essential to their protection that all such classes of persons should be kept from them until their transportation was secured.

In 1855 the New York Commissioners of Emigration took possession of Castle Garden as an immigrant landing depot, and under an act passed by the Legislature of New York the same year, all vessels bringing immigrants into the port of New York were required to land them there. The Commissioners also induced the principal railroad and steamboat lines from New York to the interior to organize in Castle Garden a central and joint ticket office for sale at regular public prices, of passage tickets for emigrants to their respective places of destination, and to place such office and the entire business of forwarding the persons and property of emigrants under the immediate supervision of the Commissioners. Having done this, they deemed it necessary to a complete reform that the system of through booking from points in Europe to points of final destination in America should be abolished, it being found that the agents engaged in that business were chargeable with enormous extortions. And they issued a circular to the governments of foreign States,

inviting their co-operation in the measures taken by them for the protection of emigrants.

In 1868 the Legislature of New York passed an act which provided that "it shall not be lawful for any agent, employee or other officer of any railroad company, or for any other person, to sell, offer for sale or otherwise to dispose of any ticket or tickets, or written or printed instrument, or instrument partly written and partly printed for the transportation or conveyance on or by any railroad or steamboat, of any immigrant or deck or steerage passenger, or second-class passenger, arriving at the port of New York from a foreign country at any place or places in the city of New York except such as may be designated by the Commissioners of Emigration, which place or places may from time to time, as they may deem best, be changed by the said Commissioners; *Provided, however,* That nothing herein contained shall prevent any railroad company from selling tickets to any person at the rates of fare charged for first-class passengers, nor from selling tickets at the principal ticket offices of such company, to immigrant and other second-class passengers, provided that such company has at the same time an agent who shall sell tickets at the place designated by the said Commissioners for selling tickets to immigrants."

The State of New York had at an early day passed an act for the levy upon every master of a vessel bringing immigrants to the ports of the State of a tax of one dollar and fifty cents in respect to each cabin passenger, and one dollar for each steerage passenger, for hospital purposes. The act was declared by the Federal Supreme Court in the *Passenger Cases*, 7 Howard, 283, to be unconstitutional, but in 1882 Congress passed an act for the levy of the sum of fifty cents for each and every passenger not a citizen of the United States who shall come by vessel from a foreign port to any port within the United States. The money collected was directed to be paid into the Treasury of the United States as an Immigrant Fund and to be used under the direction of the Secretary of the Treasury to defray the expense of regulating immigration, and for the care of immigrants, the relief of such as are in distress, and for the general purpose of carry-

ing the act into effect. The act allowed no more to be expended at any port than had been collected thereat. The Secretary of the Treasury was authorized by the act to enter into contracts with State boards for carrying into effect the objects which the act had in view.

Under the authority conferred by this act the Secretary of the Treasury entered into a contract with the Commissioners of Emigration of the State of New York whereby the Commissioners undertook to receive all immigrant passengers at Castle Garden, or at some other suitable place under their control, and there provide means for their accommodation, including interpreters, and suitable accommodations for such as shall become sick or in distress, or idiots, or lunatics, or a public charge, for a period not exceeding a year. The Board also undertook to carry out such regulation as might be established by the Secretary, to employ all necessary persons to effectuate the purposes of the contract and to render monthly account of expenses, which were to be paid from the Treasury.

To give complete effect to the intent of the act of Congress the Commissioners of Emigration invited the co-operation of the railroad companies whose lines enter New York city, and assigned to them suitable and sufficient space within Castle Garden for their immigrant ticket and luggage departments, and wharf accommodations abreast the Garden for their immigrant transfer barges. In accepting these accommodations the railroad companies requested that arrangements be made under which all details of the receiving of emigrants, furnishing them with the desired information respecting rates and charges, selling them tickets, trucking, weighing, and checking their luggage should be placed under the immediate supervision of a joint agent to be appointed with the approval of the Board, and that all the expenses of such joint agency should be shared by the railroad companies in proportion to the number of immigrants ticketed over their respective lines. The suggestions of the railroad companies were accepted by the Board and the joint agent was appointed, who made his office in Castle Garden, and sold tickets, weighed baggage, and transacted other incidental business for all the roads.

Notwithstanding this joint arrangement the several railroads did not co-operate in entire harmony, and the volume of immigration was sufficient to tempt them to underhanded and secret arrangements under which the rates for transportation of immigrants from New York to Chicago were reduced from the normal rate of \$13 to \$7.50, and were finally for a time reduced to \$1.00. In this great cutting of rates the benefits of the reduction were not, as a rule, received by the immigrant, but were monopolized by agents and other middlemen, who were thus enabled to reap enormous profits. In January, 1886, eleven railroad companies united to form an immigrant clearing house, having for its purpose the adjustment of accounts with steamboat agencies, the enforcement of uniform rules for the conduct of the immigrant business at the various receiving points on the Atlantic seaboard, the sale of tickets at uniform published prices, and the abolition of secret contracts between railroad and steamship companies, booking companies or private forwarding firms. The companies uniting to form the Clearing House were the Grand Trunk Railway of Canada; the New York Central and Hudson River Railroad Company; the New York, West Shore and Buffalo Railway Company; the New York, Lake Erie and Western Railroad Company; the Pennsylvania Railroad Company; the Boston and Lowell Railroad Company; the Central Vermont Railroad Company; the Fitchburg Railroad Company; the Boston and Albany Railroad Company; and the New York and New England Railroad Company. Afterwards the New York, Ontario and Western Railway Company and the Baltimore and Ohio Railroad Company joined them.

A joint agent was placed in Castle Garden by these companies who was supplied with tickets over all their lines. The emigrants when brought into the Garden were registered before outsiders were permitted to have any communication with them, and if they saw fit to remain in the Garden until they took train for their final destination they were supplied with provisions by licensed dealers at prices which were fixed by the Emigrant Commissioners and posted on the walls in different European languages to prevent deception

and extortion. If any emigrant desired to stay in New York temporarily or permanently his luggage was transferred for him, as directed, by a local express company at a charge named by the Commissioners; if his destination was to some interior point he was routed by the joint agent, who endeavored to apportion the transportation in such manner as to give to each road the share which had been agreed upon by all as its fair proportion.

In their dealings with the immigrants the inland railroad fare has been regulated and treated by the railroad companies as part of a through fare from Europe to the destination in this country. When the steamer fare from Liverpool to New York was \$20 and the fare from New York to Chicago was \$13, the whole fare from Liverpool to Chicago, being \$33, could be paid in a round sum in Liverpool, and the passenger so paying would receive a contract for transportation the whole distance, which would be honored by the Clearing House, and a railroad ticket furnished by it for the inland passage, for the price of which the railroad company would look to the carrier by water to whom the fare was paid. But instead of paying to Chicago the immigrant might want to pay to New York only, and when that was done the ticket for the inland transportation would be sold in Castle Garden.

While the operations of the Clearing House were continued without interruption and with the co-operation of all the carriers represented in it, the immigrant business was apportioned them on percentages agreed upon. It was a part of the agreement under which this apportionment was made that "in this distribution of business the convenience of passengers will of course be considered," and the joint agent was instructed to "take all reasonable care to prevent the separation of families or parties of friends traveling together."

It is not necessary for the purposes of this case to enter upon the statement of the various devices resorted to for the purpose of circumventing the Commissioners of Emigration and the measures taken by them for the protection of emigrants. Such devices had for their object the making of money out of the emigrant business by unscrupulous parties

in New York or by parties who made it a business to direct and control the route of the emigrant, and who received commissions therefor from the roads over which they were sent, and then, except as the regulations of the Commissioners prevented it, the emigrants were in effect sold to persons who controlled the direction of the route without the emigrants themselves receiving any benefit therefrom. The commissions paid were sometimes very large, reaching in some cases \$11 and even \$14 on emigrants for the Pacific slope. While the arrangement between the Commissioners and the roads represented in the Clearing House continued to be observed, the efforts of outside parties were, to a large extent, rendered ineffectual, though there were evasions sometimes, and probably with the connivance of one or more of the railroad companies.

In the spring of the present year the fact that the arrangement with the Commissioners was being disregarded by some of the roads was brought very plainly to the attention of the Board. Mr. Stevenson, who has for some time been a leading member of the Commission, in testimony given in this case states that in the latter part of April his attention was called one afternoon to the fact of a suspension of business in Castle Garden and of the emigrants being taken out of Castle Garden across the Battery to the various railroad offices and ticketed there. He made inquiry why this was being done in violation of the contract entered into between the Commissioners and the railroads whereby they agreed that all the business should be done in the Garden and none of it outside. He ascertained they were not selling emigrant tickets outside, but were selling to the emigrants second-class tickets; that the second-class tickets were not kept in the Garden, and consequently they had to go over to the offices of the roads and be ticketed there. He says: "I found in two of the offices a scene which made me angry. I found emigrants crowded in, women with children in their arms and bundles in their hands, trying to get their tickets changed, and then stopped to investigate the cause of it. I found that the West Shore road was the first line that did this business of taking the emigrants out of the Garden. The next day I



learned that the Erie road had chartered a tug, gone down the bay and changed the order for tickets on the Clearing House for orders on the Erie road before the vessel got to the dock; and those emigrants were compelled to go outside of Castle Garden, and the entire business was taken from under the control and jurisdiction of the Commissioners. I immediately asked two of the Commissioners to join with me and call a special meeting of the Board, which was done two days after this occurrence." At this meeting a preamble and resolutions were adopted reciting that the Board has positive knowledge that the trunk lines of railroad and other lines since admitted to Castle Garden, without their concurrence are now taking emigrants outside of Castle Garden to their offices, in violation of their agreement and greatly to the discomfort and detriment of the emigrants, exposing them to imposition and injury and removing them from the protection and care of the Board. It was therefore resolved that the existing agreement between the Commissioners and the Trunk Lines of railroad cease and determine; that a new agreement be made with each trunk line of railroad desirous of doing business in Castle Garden, said agreement to provide that all emigrants arriving at the port and going over said trunk lines shall be ticketed in Castle Garden and at no other office or place, and that the weighing and checking of emigrants' baggage shall be done in Castle Garden. Also that no higher price shall be charged emigrants thus ticketed in Castle Garden for their inland transportation or for their overweight of baggage than is charged for similar service at any railroad office in New York city or vicinity; also that said trunk lines shall agree to convey all parties of emigrants numbering fifty or over by barge or steamer from Castle Garden to the railroad depot. Also that each trunk line pay a rental to be agreed upon for such necessary desk room and space as may be allowed to it by the Commissioners, and to pay for the handling, trucking and checking of the baggage of the emigrants and its transfer to the depot, the said agreement to provide fully for the general supervision by the Board of the ticketing and forwarding of emigrants, and any violation of its provisions by the railroad company to be •

cancellation of the whole agreement and to be a sufficient cause for the immediate exclusion of the railroad company and its agents from Castle Garden. The several railroad companies on being notified of these resolutions entered into the contract required by it, and each of them severally appointed an agent in Castle Garden, all of them, however, with one exception appointing the same one, Mr. Chillion F. Doane. The Delaware, Lackawanna and Western appointed its agent, Mr. Nicholas Muller. This change in arrangement was attended by no change in rate, the emigrant rate to Chicago remaining \$13 as before. And it seems proper to state that those roads which were first found to be selling second-class tickets to emigrants outside of Castle Garden claimed to justify their action upon the discovery of similar conduct on the part of other roads, and which road was in fact the party chiefly responsible the Commission cannot undertake to say. The question is not one important to a decision of this case. Upon the reasonableness of the \$13 rate Commissioner Stevenson testified that in his opinion the rate was low enough, but thought it ought to carry with it an improvement of the service as well in time as in the vehicles of conveyance. The schedule time he thought was as short as could reasonably be expected or asked, but emigrant trains were often four, five and even six hours behind time to the great inconvenience of the friends who were waiting to meet the immigrants at the place of destination. Complainants contend that the rate ought to be reduced to ten dollars.

The first and most obvious fact apparent upon the face of the record is that the arrangements for the reception of emigrants arriving at the port of New York, for their care before their transportation is secured, and for the sale of railroad tickets to them, are entirely under the control of official authorities other than this Commission. The State of New York has, by statute, so far as it has the power to do so, vested complete control in the Board of Emigrant Commissioners, and its legislation for that purpose is so far recognized and sanctioned by federal legislation and by the action of the Treasury Department, that this Commission is without power to interfere. Even if the Commission was of opinion

that the action of the Commissioners of Emigration was unwise and unjust, it would still remain true that this Commission cannot set aside or modify it.

This is in effect conceded by counsel for the complainants who admit that as against arbitrary action by the Commissioners of Emigration this Commission can give no relief. It is insisted, however, that as against the respondents this Commission may issue its order requiring them to desist from interfering in any way with the access of complainants' agents to the presence of the immigrants before they have been required to procure their railroad tickets and with interfering with complainants' receiving those consigned to their care, and advising them as to the choice of routes, or performing for them any other service which complainants may have undertaken to perform. It is also contended that the Commission may by its order require each of the respondents to sell to complainants such tickets as they may desire to purchase for immigrants coming to their care at the same price at which they sell like tickets to others.

It is very obvious, however, that an order to that effect, if it could be enforced, would very seriously interfere with the regulations of the Commissioners of Emigration, and would distinctly antagonize their general policy. What the respondents now do which the complainants deem to their prejudice is done by concert with the Commissioners of Emigration, who could not otherwise give effect to their general views as to what is necessary for the protection of the immigrants, and the orders suggested would hamper the action of the Commissioners of Emigration quite as much as it would restrain or compel the action of the respondents, and it would open the door to all the abuses which those Commissioners are appointed to prevent.

It is but just to the complainants to say that nothing in the evidence fairly tends to show that the American Emigrant Company while it continued in business, or complainants as its successors, were ever guilty of the wrongs and frauds which the Commissioners of Emigration are appointed to prevent. Conceding this to the fullest extent, and that the privileges they seek to establish in this proceeding would not

be abused in their hands, it still remains true that we cannot give them the relief they desire. And it may be added that if the Commissioners of Emigration were to open the doors to complainants they must do the same thing for others, and the old condition of things would soon be restored. Such at least would seem to be the inevitable result.

No part of the relief which complainants seek on their own behalf can therefore be granted.

In so far as complainants ask an order for the benefit of the immigrants themselves, it is based on three grounds, namely:

- I. Excessive charge for transportation.
- II. Excessive charge for baggage.
- III. Unsuitable transportation.

Emigrant fare, when the complaint was filed, was thirteen dollars from New York to Chicago. The evidence which was given to establish the fact that this charge was unreasonable consisted largely of proofs that the charge had formerly been much lower. Not much can be predicated of this fact. There is scarcely a road in the country that has not at some time carried passengers or freight at a compensation that would bankrupt it if long persisted in. This fact is very well known and understood. The other evidence brought forward on the hearing did not so much tend to establish the fact that the charge made was unreasonable, as that the immigrants were not given suitable transportation. Since this case was heard, however, that rate has been reduced five dollars, at which figure it now stands. The reduction is the result of a rate war, brought about, as there is reason to believe, by the payment of commissions to secure the routing of the immigrants. While the war continues the carriers will doubtless do what they can to injure each other in respect to this branch of their business, and in doing so they will at the same time to a greater or less extent break down or weaken the protections devised for the immigrants. Meantime there is no occasion for an expression of an opinion upon the reasonableness of the former rate.

When the complaint was filed the allowance of free baggage to an immigrant was 100 pounds, and the charge for extra baggage was \$2.60 per hundred pounds. The allowance of free baggage was increased before the hearing to 150 pounds and the charges for extra baggage reduced to \$1.95 per hundred pounds. The charge does not seem to be excessive.

The transportation was supposed to be unsuitable because the vehicles of conveyance were unfit for the purpose, and also because the time made was unreasonably long. On the last point the evidence was not sufficiently specific to enable the Commission to say that there is clear failure in duty. It is no doubt true that in very many cases immigrant trains do not make the time intended, and that the immigrants and the friends who may be waiting for them at the points of destination are greatly inconvenienced thereby; but this in a great many cases happens with the first-class passenger trains also, and it is not possible at all times to prevent it. The schedule time between New York and Chicago over the different routes at the time of the hearing varied from about thirty-three hours to thirty-nine. This, if the trains were run to it, could hardly be deemed unreasonable for a distance averaging over the several lines about a thousand miles.

As regards the cars used for the transportation of emigrants the Commission deemed personal inspection better than the taking of evidence, and caused one to be made in the several yards at New York city and vicinity and on the routes of the several railroad carriers. The result of the inspection was in some cases satisfactory and in others not. The most unsatisfactory cars were found in use by the New York Central and Hudson River Railroad Company, those employed on the West Shore road being the worst of all. The attention of the executive officers of the company was at once called to the necessity of improvement in this regard, and assurances were given that the unfit cars then in use on the road should be put in proper condition or be replaced by such as were suitable as soon as it could well be done. Former deficiencies in respect to cleanliness it was also promised should not be discoverable hereafter.

It is suggested on the part of complainants that defendants are guilty of discrimination in refusing to sell tickets to other persons on the same rates that they make to immigrants. But we are not satisfied that this is unjust discrimination. The roads west of Chicago it seems have only first and second class rates; the respondents have an immigrant rate in addition. If they were to give immigrant rates to other persons the distinction on which the rates are made, and which limits them to a particular class of persons, would be done away with, and the second-class rates and the immigrant rates would almost necessarily become merged. We are not satisfied that this would be best, and in any view we might be inclined to take of it, we should not order it to be done in a case where the point is raised so indirectly as it is here, and not by parties interested in it.

The case of *Smith v. Northern Pacific Railroad Company* (1 Int. C. C. Rep., 208), is cited against the right to make the distinction between immigrant and second-class rates, but we do not think it applicable. In that case a distinction in charge was attempted to be made between classes of persons who could not by any practicable tests be distinguished and who were all to enjoy the same accommodations. In the case before us we have a class of persons readily distinguishable from the general public, and so far constituting a special class that up to the time when they are received upon the cars they are subject to exceptional regulations for reasons which, being accepted as a basis of legislation, must be deemed sufficient. This special class of persons are given accommodations essentially different to those provided for others, in cars specially set apart for their use, and which are commonly made up into trains by themselves, and returned to the seaboard empty. The service is thus seen to be special, and the rates charged correspond to it.

We cannot say that under such circumstances the classing them by themselves on the rate sheets is either illegal or wrongful. It harmonizes with the policy of legislation on the general subject so far as it has been expressed, and it wrongs nobody else to give them rates restricted to the particular class exclusively. There is no such danger of fraud through

other persons passing themselves off as immigrants as was pointed out in *Smith v. Northern Pacific Railroad Company* in the case of pretended land explorers.

The result of this opinion is that the complaint must be dismissed.

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JAMES F. SLATER v. THE NORTHERN PACIFIC  
RAILWAY COMPANY.

Complaint filed June 6, 1888. Answer filed June 27. Hearing at Dubuque, Iowa, July 27. Decided November 23, 1888.

- A complaint made for the purpose of retaliation for a fancied wrong, as to get even with a carrier for the revocation of complainant's pass, does not commend itself to the Commission.
- A carrier which has conformed to the ruling of the Commission should not be prosecuted for alleged violations of law in that respect which occurred before such ruling was made and under a construction of the law then approved by the carrier's counsel.
- Free transportation issued in the form of an annual pass to a person not in the regular and stated service of the carrier nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in its way what business he conveniently could, held to be illegal.

*James F. Slater*, complainant, *pro se*.

*J. C. Bullitt, Jr.*, for defendant.

WALKER, *Commissioner*:

A complaint filed by James F. Slater, of Highland Park, Illinois, alleged that the defendant, about July, 1887, issued free transportation to one Frederick Fischer, from St. Paul, Minnesota, to Tacoma, Washington Territory, and return; that said Fischer was not a railway employee at the time, and that said transportation was used by him.

The answer admits that transportation was issued to said Fischer as alleged, but asserts that a justification therefor existed, consisting in the fact that it was furnished for the



purpose of promoting the sale of its land and the settlement of the country along the line of its road; and further states that after the decision of the case of W. U. Smith against the same defendant by this Commission in November, 1887, the defendant changed its rules and regulations in that respect.

At the hearing, testimony was given on the part of the defendant, in substance, as follows. That the complainant, James F. Slater, in July, 1887, represented to the defendant that he had found respectable parties in Illinois whom he could interest in a plan for irrigation in the Yakima Valley, in Washington Territory, which was important for the sale of lands owned by the defendant in that section; that the gentlemen would first wish to make an examination of the country which it was proposed to irrigate and the sources of supply; that a conference was had in Chicago by the officials of defendant's land department with Mr. Slater and his friends, at which the irrigation project was discussed, and something also was said about the establishment of a wholesale grocery house at Tacoma; that free round-trip tickets to Tacoma were provided, which were used by Mr. Fischer and two other gentlemen, who, however, failed to stop in the Yakima Valley, but went directly through Tacoma to Seattle, where a wholesale grocery house was established by one or more of them.

That afterwards, in the fall of 1887, the complainant Slater wrote various letters to officials of the transportation department of the defendant, which were produced in evidence; and in compliance with requests therein made he was furnished by defendant with an annual pass, in which he was described as an "employee," being considered in the nature of an emigrant agent; that some time after this the land department of defendant's road learned that complainant Slater was traveling with an employee's annual, and protested against his being so employed by the company; that the pass was thereupon immediately cancelled; that Slater then wrote the defendant that he had a record of several violations of the Act to regulate commerce on its part, which he proposed to look after and which were good cases for investigation by

the Interstate Commerce Commission. This letter bears date March 28, 1888, and his correspondence with the Commission in respect to the complaint which was presently filed, commenced April 9, 1888.

Complainant did not appear at the hearing; he was afterwards furnished with a copy of the testimony on the part of the defendant and was allowed until September 25, 1888, in which to file testimony in reply if desired.

The free transportation furnished to Fischer, through the land department of the defendant company, was under rules and regulations then in force, but which were afterwards changed pursuant to the decision of the Commission in the case of *Smith v. Northern Pacific R'y Co.* (1 I. C. C. R., 208). The company claims that the decision and order in that case have ever since been complied with, and no proof to the contrary has been brought in any manner to the attention of the Commission.

It seems to have been the impression of the complainant that to secure the imposition of a heavy fine upon defendant it was only necessary for him to furnish information to this Commission of some violation of the Act to regulate commerce. In one of his letters he says that he proposes to "see that justice is done, though it may take \$95,000—i. e., \$5,000 for each one of these passes," referring to the free tickets above described, and others.

The Commission has no power to impose penalties for violations of the law, the penal provisions of which are only enforceable through the ordinary machinery of the courts of the United States. In case of willful violation it might be the duty of the Commission to lay the facts before the United States Attorney of the proper district for action. But this case is not one which seems to require that course; on the contrary, the transportation in question was issued and used under a construction of the law which defendant's counsel had approved, but which afterwards, on a formal hearing, the Commission decided to be incorrect; whereupon the method pursued by the Company was immediately changed, and the course suggested by the Commission was promptly

and cheerfully followed. It would be altogether wrong for the Commission to set on foot a prosecution under such circumstances.

Especially in a case where the motive of complainant is confessedly that of retaliation for a fancied wrong, it would be the height of injustice for the Commission to take action in furtherance of such a purpose, unless the offence was so flagrant as to efface from view the circumstances under which the matter is brought to light. In the present case the correspondence clearly shows that the complaint was made for the purpose of punishing defendant for the withdrawal of complainant's "annual." The Commission does not desire to lend itself to the assistance of such a scheme, and under such circumstances it would be slow to act unless the conduct of defendant was such as to exhibit a willful and perverse disobedience of some provision of law. This defendant so far as appears, is now endeavoring in good faith to conduct its operations in conformity to the statute as interpreted by the Commission, while it appears that the complainant was himself the moving spirit in the transactions of which he now complains. His complaint therefore does not appear to call for any further notice from the Commission.

The so-called employee's annual, issued to Slater himself, requires a few words of comment. It appears that complainant Slater on October 12, 1887, addressed a letter to T. F. Oakes, the vice-president and general manager of defendant, in which he used the following language:

"I will in all probability have charge of Marshall Field's 40,000 acre tract, and the colonizing of the same, because I can doubtless prove of service and benefit to the Spokane and Palouse Land Co., as well as to the N. P. R. R., as I propose to emigrate several hundred people to W. T. within the next 12 months. All I ask of the N. P. in return for throwing what business I conveniently can in their way, is transportation in the shape of an 'annual.' I have already been the means of taking into W. T. and Oregon parties who have in-

vested over \$530,000 (and who would not have went there had I not persuaded them to do so), and have more in view provided the desired arrangement is made. I have induced two parties to go out on the Sound and start manufacturing shingles for this, Chicago, and other eastern markets, so as to give freighting of same to your R. R. As showing whether I have any strength with my friends I refer to the fact of my having persuaded 28 of them to go to W. T. and buy round-trip tickets over the N. P., thus assisting the Pass. Department to over \$2,500 they would not have received had it not been for me. I have some parties who were talking of going to Oregon to start in the business of shipping wheat direct to Liverpool from there, but I have, I think, got them so far persuaded that they can be induced to locate on the Sound instead, and thus prove of great benefit to the N. P. by purchasing grain in Walla-Walla and the Snake River country and sending it to the Sound instead of to Portland."

This was followed up by persistent application of like effect, and resulted in his obtaining a pass, which was issued to him as an alleged "employee," and which he used until it was revoked as above stated.

Whatever else Slater may have been he clearly was not an employee of the defendant; he did not undertake to perform any particular service, nor was he entitled to receive any wages or salary under a contract of employment; all the compensation he asked was "transportation in the shape of an annual," and this was to be "in return for throwing what business I conveniently can in their way." That is, he was to assist the Company as much as he conveniently could, consistently with his own occupations, provided he might be allowed to ride free upon its trains.

Carriers can reward persons not in their stated and regular employment for occasional services, or for benefits indirectly received, in other and better ways than by furnishing them with free transportation. Some of the evils which resulted from former methods were referred to in the First Annual Report of this Commission, and others might be named. It may be said that a pass costs the carrier little or nothing,

and that when the good will and occasional good words of a person who is able to influence the direction of traffic can be obtained so cheaply it is a hardship to prevent the carrier from making use of the opportunity; but the evils in the unrestricted employment of free passes by common carriers had grown so great and had become so apparent, both to the public and to the carriers themselves, that it was deemed by Congress to be absolutely necessary to eradicate the whole system from interstate commerce in order to put an end to the abuses which had grown beyond the limits of any other regulation or control. The law was framed accordingly, prohibiting the giving of free transportation to passengers carried under substantially similar circumstances and conditions, as an unjust discrimination, under the general terms employed; with only the exceptions made in section twenty-two that "nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers or employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees."

If any person who is in position to render to a common carrier a service or a favor, by kind words or by useful paragraphs, can be properly considered to be an "employee," the exception may easily become broader than the rule; that word is evidently here employed in its ordinary signification. The revocation of Slater's pass was demanded upon broader grounds than that suggested in the protest of the land department of the defendant; he should never have received it.

The complaint is held to be not sustained.

## IN THE MATTER OF RELATIVE TANK AND BARREL RATES ON OIL.

In deciding a case against one or more carriers who are charged with making rates which are unjustly discriminating in a certain line of traffic, the decision made upon the facts of the particular case does not necessarily govern rates in other sections of the country where the facts bearing upon them may be altogether different.

In cases against carriers who were charged with discriminating unjustly in their rates as against those shipping petroleum and its products in barrels in favor of those who shipped in tank cars, the evidence among other things showed that in the territory served by the defendants the shipment in barrels was most dangerous, and also that when shipment was in tanks there was greater likelihood of return loads. The difference in rates made by the carriers was considerable; the Commission equalized this, but still permitted a charge for the weight of the barrel.

In the same cases it was incidentally made to appear that on the Pennsylvania system of roads some of the conditions affecting rates on this traffic were the reverse of those above stated, and the rates had theretofore been made the same by quantity, whether the shipment was in tanks or in barrels. On the decision above referred to being made the rates on barrel oil were raised by the managers of the Pennsylvania system so as to include a charge for the weight of the barrel. This was claimed to be done in order to come into conformity with the action of the Commission.

*Held*, that the action was unwarranted. A decision on facts does not establish a principle to govern where the facts are different, and no facts which had been laid before the Commission would have authorized a ruling raising the rates on the Pennsylvania roads on barrel oil either absolutely or relatively.

By the COMMISSION:

Some time in the month of September last it came to the knowledge of the Commission that a circular signed by John S. Wilson, General Freight Traffic Agent of the Pennsylvania Railroad Company, and by W. J. Brundred, General Agent of the Green Line, had been issued, dated August 18, 1888, to take effect August 28th, 1888, and which is in the following words:

“The rates on refined oil and other products of petroleum, between points covered by current circular, will be adjusted in accordance with the directions of the Interstate Commerce

Commission, so that the charge will be on the actual weight, including therein the weight of the barrel, when in barrels."

This circular was accompanied by rate sheets which showed an advance in the rates on oil in barrels to the extent of charging the weight of the barrel at the current rates charged upon the oil before. Previous to this time the rates had been the same upon quantity whether the oil was taken in tanks or in barrels. The rate on the transportation of the oil in tanks was left at this time undisturbed.

The Commission immediately called the attention of Mr. Wilson to this circular, and in a personal interview expressed surprise at its issue, and especially at what was said therein about directions of the Commission. He was asked what directions were referred to, and in reply he mentioned the decision of the Commission in the case of Rice against the Louisville and Nashville Railroad Company and others, which he claimed in effect amounted to the settlement of a general principle for the country, and therefore might well be treated as a direction of the Commission. It is to be observed of this decision that it had been made, promulgated, and generally distributed six months before this circular purporting to come into conformity with it was issued.

It was pointed out to Mr. Wilson that the circular was misleading; that it was not true in fact; that the impression it gave was that the Commission had directed the advance in rates on barrel oil which had been made; and he was told that from the information coming by letter and otherwise to the Commission there was reason to believe that the statement contained in the circular had been more emphatically and directly made by the agents of the Pennsylvania Company in their business communications with the customers of the road. It was suggested to him therefore that the company should either withdraw this circular and restore rates, or in some way should make full and satisfactory explanations.

No change having resulted from this conference, the Chairman, by direction of the Commission, addressed a letter on October 10th to Mr. Roberts, the President of the Pennsyl-



vania Railroad Company, covering some other matters, but referring to this circular, as follows :

“The other question concerns a general notice purporting to be issued by the Pennsylvania Railroad Company, Green Line, to take effect August 28th, 1888, and signed by the General Freight Traffic Agent, and also by Mr. Brundred.”

Then, after quoting the circular, the letter proceeds :

“The current circular, as I understand it, continues the rates previously existing and charged on oil transported in tanks, and the change made at this time consisted in advancing the charges on oil in barrels so as to include the weight of the barrel in the charge made by the hundred pounds, which had not previously been done.

“This circular seems to warrant an inference—and it is an inference which we think shippers are likely to draw—that the Interstate Commerce Commission has given your company some direction in obedience to which you are advancing the rates on barrel oil. An explanation will therefore be desirable as to the particular directions to your company which were in mind, or, if directions to others were intended by the circular, then as to the directions to others which your company understand would preclude a continuance of your previous rates on barrel oil. In making response you will of course add whatever you may deem important regarding the reasons for any advance in rates.”

Responding to this letter on October 16th next, Mr. Roberts says :

“I note your inquiry in reference to the circular issued by the Pennsylvania Railroad Company (Green Line) taking effect August 28th last, and signed by the General Freight Traffic Agent of the Pennsylvania Railroad Company, and by Mr. Brundred, agent of the Green Line. I beg to say that this circular letter was issued for the purpose of conforming to what we understood to be the ruling of your Commission in the case brought by Mr. Rice against the Louisville and Nashville Railroad Company.

“We understood you to say in this case that where oil was carried in tanks the same charge should be made per hun-

dred as where oil was carried in barrels ; but that as the tank was merely a form of car the railroad company should charge for the weight of the barrels as well as the oil. Our practice theretofore had been to charge simply for the oil when in barrels, and not for the packages, but in this, as I understand it, we stood alone, and upon your decision being promulgated the seaboard refiners insisted that we were bound to charge for packages as well as for the oil, and thus give them the benefit of their location nearer the market. Fearing that under your ruling, in case they should resort to the courts to enforce their views, we would be without an adequate defense to such action, the circular to which you refer was issued for the purpose of conforming to your decision. Inasmuch as our rates on tank oil were already as low as we thought they reasonably should be, we were, of course, compelled to advance our rates on barrel oil in order to carry into effect the principle of your decision.

“I thank you for the opportunity which you have given me by your letter to explain the action of our company in these matters. Should you think a personal conference would tend to a better understanding, it will give me great pleasure to meet your Commission at a mutually convenient time and place.”

Responding to this letter, under the direction of the Commission, the Chairman said, under date of October 18th, after referring to another subject :

“In regard to the other matter which was in part the subject of my former letter, what your attention was specially called to, was the fact that in the circular you issued the change made in rates, and which consisted in an advance upon oil carried in barrels, purported to be done by direction of the Commission. Now, as the Commission has given no such direction, the form of the circular was, to say the least, decidedly objectionable, and suggested to shippers what was not true in point of fact. The Commission was not finding fault with your change in rates and it would find no fault with your putting such construction as you thought was warranted upon any of its decisions, but facts stated should conform to

The actual state of things, and we ought not to be reported as directing a thing which we might not perhaps have even assented to.

“ You have assumed in your action to take what is in the nature of a long step toward establishing a uniform classification for oil in tanks and in barrels throughout the country. I know of nothing done by the Commission up to this time that would preclude it, if the duty of making a uniform classification in respect to that article of traffic were forced upon it, from equalizing *down* so far as concerns transportation in barrels in other portions of the country, so as to establish the like equal rating everywhere that had prevailed in your system prior to your recent action. The proper rule to apply in the territory served by your roads had not been passed upon by the Commission at all. All it has done was to cut off by decisions it had made a considerable portion of the difference made by Western and Southern roads between barrel and tank shipments. On your system the rates had always been the same, and the testimony before us was very strong that they ought not to be different. If the question of equalization had been forced upon us it would have been perfectly admissible for us to look the country over and determine, on a survey of the whole field, what change would result in least injury, for considerable injury from a change such as you have made would seem unavoidable. But whatever we may have thought as to the justice of your rates as now made, if we had been compelled to decide upon them, the impropriety of stating that an advance was made by our direction seems obvious. The Commission, I assure you, has no desire to be captious in regard to any such matter. It desires, on the other hand, to treat all the carriers of the country with the utmost fairness and be particularly careful of their rights at all times, but you will doubtless agree that in respect to fair treatment the obligation is reciprocal.”

In the same letter the suggestion made by Mr. Roberts for a consultation was accepted, and Mr. Roberts, with the counsel of the company, appeared at the office of the Commission, where the whole subject was very fully discussed. It was

agreed in that conference that the circular above referred to was, to say the least, in its use of the word "directions," misleading, and that it ought to be withdrawn with some proper explanation. Whether the former rates should be restored was to some extent the subject of conversation, and Mr. Roberts was understood to say that the motive in making the change was not a dissatisfaction with the former rates, but in order that the action of the company might be brought into line with what were understood to be the views of the Commission.

Following this conference another circular was issued by the Pennsylvania Railroad Company, bearing date November 15th. This is also signed by the General Freight Agent of the company, and by Mr. Brundred, General Agent of the Green Line, and is in the following terms :

"It has been brought to the attention of this Department that the circular of August 28th, 1888, authorizing the charge for the weight of barrels containing oil, is open to the construction that such charge was made in obedience to an order of the Interstate Commerce Commission, directed to this company, requiring it. This department deems it proper to say that no such order was issued directly to this company, but the action referred to was taken for the purpose of conforming the practice of this company to the principles decided by the Interstate Commerce Commission in the case of Rice against the Louisville and Nashville Railroad Company, as understood by this Department." (1 I. C. C. R., 503).

As this circular, like the other, is calculated to give the impression that an advance in rates on barrel oil is necessary in order to come into conformity with the decision in the Rice case, and the Pennsylvania Company is still understood to adhere to the advance and to the difference in rates which was established in August, and as the Commission has reason to think that in some other cases changes in rates have been made in sections of the country where the rates on oil have not at all been considered by the Commission—the changes being made for reasons similar to those stated in the circulars of this company—it is deemed necessary to review to

some extent the whole subject, in order that there may be no longer any occasion for misapprehension.

In thus reviewing the subject the Commission desires to say plainly and with explicitness that when making a decision upon a question purely of fact in respect to traffic in one section of the country whereby it endeavors to do justice, it does not understand that it is necessarily laying down a principle which must be applied in other sections of the country where the peculiarities of the traffic may be so different as to require an altogether different ruling in order to accomplish the like just result. Every railroad manager understands perfectly that the peculiarities of traffic in different sections have always made different treatment to some extent essential to public as well as corporate interests; that classifications differing very radically have come into existence as a consequence, and that to force conformity at once would in many cases be extremely mischievous. The Commission has in all its action had this fact in mind, and if it has in any case refrained from expressly stating it when making a decision, it has been because it had not occurred to its members that a fact so well known needed to be declared for any purpose of information to the carriers, or even to the general public.

Now, the evidence presented to the Commission in the case referred to in the circulars was very clear and strong that the differences in the transportation of oil in different sections of the country which might properly be taken into consideration in making rates were very considerable. In the Southwest the evidence tended to show that the greater heat of the climate was calculated to increase the risk of leakage in barrel shipments through the shrinkage of barrels, and because of that fact, and of others which were given, the transportation in barrels was much more hazardous than the transportation in tanks. It also showed that when the oil was carried in tanks the probability of return loads of cotton-seed oil or turpentine was an important consideration, such loading being much more probable than return loading when the transportation was in barrels; the cars in which the barrels were taken becoming so affected with the odor that sugar and

most articles of general merchandise could not afterwards be taken in them without injury.

On the other hand, the evidence from the Pennsylvania system was that return loads would there be most likely to be obtained for the box cars—iron, coal, coke, &c., being available for this purpose—and that the risks on that system were much the greatest when the shipments were made in tanks. Mr. Brundred, who signs the circulars above recited, was sworn in the case, and his evidence seemed to make it very clear that the practice of the Pennsylvania Railroad Company in making equal rates by the quantity for the transportation of oil in tanks and in barrels was a just and proper practice whether considered from the standpoint of that carrier's interest or from that of the shipper. He was a very competent witness, for he had been familiar with the business for twenty-two years, and his evidence in support of the practice on this system of roads was very strong, nor was there evidence from any other source tending to qualify it, or to show that the Pennsylvania Railroad Company would be justified in making rates on oil otherwise than as it had made them up to that time.

The decision made in the case in which the testimony of Mr. Brundred was given, accomplished a considerable reduction in the relative rates on barrel oil on lines which had been accustomed to charge much higher rates by the barrel on oil in barrels than on oil in tanks; and in order to preclude further discriminations as against the transportation of oil in barrels, that had been previously accomplished in that section of the country by giving gross tank-car rates when the tanks differed widely in capacity, the rule of making rates by the hundred pounds was prescribed for those lines, accompanied by the statement that even this would put the shipper in barrels at some disadvantage, for he must pay freight on barrels as well as on oil.

Now it did not occur to the Commission as at all necessary that in deciding that barrel rates in one section of the country ought to be reduced it was deciding either directly or in effect that barrel rates in another section of the country should be increased. It was not supposed to be necessary

to state for the information of parties familiar with the subject that the decision was made under the guidance of the testimony which had been produced, and in order to control the action of the parties defendant and not that of carriers whose circumstances and experience as they were connected with this traffic might be altogether different. The Commission would not have been warranted in that case in laying down a uniform rule for the whole country in regard to barrel and tank car rates, for two very conclusive reasons: first, that the carriers of the country generally were not before it, and had no opportunity to present the facts relating to their sections of the country, except as they had been summoned as expert witnesses for the parties then contesting; and second, such evidence as was produced tended strongly to show that a uniform rule, if applied to all sections, would in some at least operate unjustly.

Another decision not referred to in the correspondence above recited, but concerning the same general subject, was that of Scofield against the Lake Shore and Michigan Southern Railway Company. (2 I. C. C. R. 90). The traffic there in question was the West-bound traffic in refined petroleum oil from Cleveland, and the evidence there, as in the Rice case, was that the particularities of the traffic, not only in different sections, but as it was carried in different directions, were very considerable, and the case was decided upon the facts as they were presented, and without any purpose of making a decision of general application. Like the Rice case this last was a case presenting questions to be determined upon the facts shown.

Had the Commission been under the necessity of passing upon the propriety of the action of the Pennsylvania Railroad Company in giving equal barrel rates whether the oil was in barrels or in tanks, it would, on the evidence before it in the Rice case, have felt compelled to say that upon the Pennsylvania system the practice was a proper and just one. And the Commission must repeat, that had it at the time been required to pass upon the question of the classification of oil for all the roads of the country for the purpose of bringing the rating in all sections into harmony, it might, on



a survey of the whole field, have deemed it on the whole more just and politic to class oil in barrels and in tanks together for barrel rating by quantity, and thus make the Pennsylvania practice universal, rather than to force the Pennsylvania system to adopt any practice prevailing in other sections; but it might also, with entire propriety, if it was thought that the public interest would thereby be best subserved, have adopted a compromise between the two methods so as to establish a difference in the rating of barrel shipments and of tank shipments which would be less than that which was prescribed by the decision for the Southwestern roads.

But the Commission, as the carriers very well understand, has not favored any sudden forcing of uniformity in classification. While believing it to be desirable, it has also believed that it should be approached deliberately and so as not suddenly to disturb business and unsettle prices.

The Commission in this paper raises no question of the good faith of the Pennsylvania Railroad Company in its issuance of either circular, and what it says is upon a concession that the company desired to meet the views of the Commission. It is nevertheless obliged to say that the assumption on which the circulars have been issued is not well founded. The Commission has made no decision applicable to the Pennsylvania Railroad Company which would require an advance in barrel rates above tank rates, for the traffic in the section of country served by that road, and it has had before it no evidence which, in its opinion, would warrant such a decision. The last circular is not objectionable in point of form, but this, like the other, is open to the construction that something done or said by the Commission requires or justifies an advance in barrel rates. This is not the case. The Commission has no evidence before it that the rates heretofore made by the Pennsylvania Railroad Company for the transportation of oil in barrels were not relatively fair and just, and as great as could properly have been charged.

**THE NEW ORLEANS COTTON EXCHANGE v. THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY; THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY; THE VICKSBURG AND MERIDIAN RAILROAD COMPANY; THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY; AND THE NEW ORLEANS AND NORTH-EASTERN RAILROAD COMPANY.**

Complaint filed November 11, 1887. Amended Complaint filed November 25, 1887. Answer filed December 10, 1887. Heard March 5 and 6, 1888. Decided November 26, 1888.

**REPORT AND OPINION OF THE COMMISSION.**

1. To correctly estimate the causes influencing the movement of cotton and the falling off in the proportion of the crop received at New Orleans in recent years, the rail lines of transportation constructed, improved methods, and new conditions must be taken into account.
2. Whether railroad companies combine or act separately in making rates and charges is not so important, the essential requirement is that however made they shall be reasonable of themselves and so fairly adjusted as to be reasonable in their relations to each other and to their results.
3. That under like conditions freight can be carried proportionately lower for long than short distances is as nearly settled as anything relating to railroad charges can be. Equal mileage rates would often prevent legitimate competition and give a monopoly in transportation to the best and shortest road.
4. The reasonableness of rates cannot be fairly determined in a proceeding to which some of the parties responsible for such rates are not parties.
5. Commerce between points in the same State, but which in being carried from one place to the other passes through another State, is Interstate Commerce, and subject to regulation by the provisions of the Act to regulate commerce.
6. In determining what are reasonable rates, the fact that a road earns little more than operating expenses is not to be overlooked, but it can not be made to justify grossly excessive rates. Wherever there are more roads than the business at fair rates will remunerate, they must rely upon future earnings for the return of investments and profits.
7. To be reasonable, the rate from Meridian to New Orleans should not exceed \$1.50 per bale, compressed cotton.

**MORRISON, Commissioner:**

The New Orleans Cotton Exchange complains of the de-

fendants that they are an association and combination of railroad companies, on and over the roads of which companies transportation, whether local to one or continuous on all, is done under a common control, management and agreement and on which the charges for transportation, especially the charges for carrying cotton from Meridian, Miss., Monroe and Shreveport, La., and from other points on defendants' roads to New Orleans, complainant alleges to be unreasonable and unjust; that they, the defendants, demand and receive from the members of the Cotton Exchange and other business men of New Orleans greater compensation for the transportation of cotton to and from the city of New Orleans than it collects from other persons for doing for them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions and are guilty of unjust discrimination; that they, the defendant companies, in connection with other carriers, the names of which are unknown to the complainant, carry cotton and other freight to Boston, Lowell, and New York, from Meridian, Shreveport and other points in the cotton-growing districts at rates many times less per ton per mile than the rates and charges per ton per mile from the same places to New Orleans, thereby subjecting that city, the members of the Cotton Exchange and other dealers in cotton, to unreasonable disadvantages, and giving undue preference to the cities of New York, Boston and Lowell and to the cotton dealers of said Eastern cities.

The complainant prays that the defendants may be required to discontinue such alleged unjust and unreasonable charges, discriminations, preferences and disadvantages, and may be ordered and directed to carry cotton from Meridian, Miss., and other points in the cotton-growing region, to New Orleans at one-half cent per ton per mile and at no greater rate per ton per mile than is received by defendants for carrying cotton from the same points to Boston, Lowell and New York.

The defendant companies answering together, but making their answers separate and distinct as to each, deny all unjust and unreasonable charges, discriminations, preferences and

disadvantages alleged against them or any of them. They aver that their roads are conducted in harmony to the extent that through transportation is effected without break of bulk or change of cars by passengers; that said companies are separate and distinct corporations, each having its own board of directors, making its own contracts, owning its own railroad and rolling stock; that they have no joint property, accounts, liabilities or profits; that each company, for business over its line makes its own rates independent of the others, and for business over the lines of more than one of the defendant companies, such companies alone make rates and charges.

The answer further avers that the road of the Vicksburg and Meridian Railroad Company is wholly within the State of Mississippi; that the road of the Vicksburg, Shreveport and Pacific Railroad Company, extending from Delta through Monroe to Shreveport, is wholly within the State of Louisiana; that through shipments of freight from Monroe and Shreveport, La., to New Orleans are made by the Vicksburg, Shreveport and Pacific railroad from said points to Delta, on the Mississippi river opposite Vicksburg, from which point it is taken to New Orleans by the Louisville, New Orleans and Texas Railroad Company; that the rate on such shipments is made by these two companies and is not made or participated in by any party to this proceeding except the Vicksburg, Shreveport and Pacific Railroad Company. The defendants ask that the complaint be dismissed.

From the testimony heard, depositions taken and read, the published rates filed with the Commission, and from such statements made in the complaint and answer as are not disputed, the facts are found to be these:—

1. The complainant is a corporation under the laws of the State of Louisiana, composed of merchants, traders and dealers in cotton.

2. The defendants are corporations and common carriers, engaged in the transportation of passengers and property by railroad, associated and advertising themselves together as the "Queen and Crescent route." The Cincinnati, New Orleans

and Texas Pacific Company as lessee, operates a line of road 335 miles in length from Cincinnati, Ohio, through Kentucky to Chattanooga, Tennessee, sometimes known as the Cincinnati Southern Railway. The road of the Alabama Great Southern Railroad Company runs from Chattanooga to and through Georgia and Alabama to Meridian, Miss., a distance of 295 miles. The line of road of the New Orleans and Northeastern Railroad Company extends from Meridian to New Orleans, La., a distance of 196 miles. The road of the Vicksburg and Meridian Railroad Company extends 140 miles from Meridian, Miss., to Vicksburg, in the same State. The line of road of the Vicksburg, Shreveport and Pacific Railroad Company is 174 miles long from Delta, La., to Shreveport, La.

3. These several roads maintain separate organizations. Their roads are operated in harmony and as a continuous line for the transportation of through freight or passengers. Charles Shiff, who is president of the Cincinnati, New Orleans and Texas Pacific Railway Company, is president of each of the other companies, and the same is true of all the general officers of said companies. H. Collbran is, or was when this case was heard, general freight and passenger agent for each of the roads separately and as such made the rates for all. These general officers have but one salary, for the payment of which each of the companies contributes in proportion to its earnings. The majority of the capital stock in all the companies is owned by the same interest.

4. The distance from Meridian over the Alabama Great Southern and the Cincinnati, New Orleans and Texas Pacific, the "Queen and Crescent route" to Cincinnati, and thence by their connections to New York is 1506 miles. The distance from Meridian to New York by the East Tennessee, Virginia and Georgia railway and its Eastern connections, a road competing at Meridian for cotton and other East-bound freight, is 1,246 miles. The distance over the Vicksburg, Shreveport and Pacific railroad and connecting line, the Louisville, New Orleans and Texas railway from Shreveport

to New Orleans is 409 miles. Over the Texas Pacific railway, the distance from Shreveport to New Orleans is 328 miles.

5. In 1859 fifty per cent. of the entire cotton crop was received at New Orleans. In 1870 '71 thirty-three per cent. Formerly all cotton receipts were handled at New Orleans.

The cotton movement at New Orleans for seven years, compared with the cotton crop of the United States, during the same period was:—

Year.	Crop (bales).	Gross receipts at New Orleans.	Handled in presses.	Proportion of total crop received at New Orleans, gross.	Proportion of total crop handled in presses at N. Orleans.
1886-'7	6,505,087	1,919,186	868,875	29.5	13.4
1885-'6	6,575,691	1,946,037	1,133,112	29.3	17.3
1884-'5	5,706,165	1,897,507	984,587	29.7	17.2
1883-'4	5,713,200	1,799,381	1,103,379	29.9	19.3
1882-'3	6,949,756	2,013,586	1,296,220	29.0	18.6
1881-'2	5,458,048	1,373,175	1,104,866	25.2	20.2
1880-'1	6,603,750	1,883,849	1,417,679	28.5	21.5

The receipts for the year 1887-8 show a slight decline from the average of the several previous years. The present facilities for receiving, forwarding and handling cotton at New Orleans are as ample as at any former period. The increase in the annual crop is largely West of the Mississippi river, which brings New Orleans nearer to the centre of the cotton-growing region.

6. Of the cotton carried by the New Orleans and Northeastern road, 95 per cent., and of that carried by the Vicksburg, Shreveport and Texas Pacific Railroad, 73 per cent., is carried to New Orleans. More is received there by rail and less by water in recent years. Cotton is carried in considerable quantities from Meridian and the surrounding cotton-growing districts by all railroads to Eastern ports and markets and on through bills by way of Baltimore, Newport News, Brunswick, Savannah and other South Atlantic ports to Eastern and foreign markets.

7. The earnings of the New Orleans and Northeastern and of the Vicksburg, Shreveport and Pacific roads are above operating expenses. They are not and never have been sufficient for the payment of operating expenses and interest or fixed charges. The New Orleans and Northeastern road runs through a flat pine wood and not very fertile country, passing several miles over Lake Pontchartrain and adjacent swamps. Its cotton rates from Meridian to New Orleans are substantially the same as the rates on the Illinois Central from Jackson and other points equally distant as is Meridian from New Orleans. The rates fixed by the Railroad Commissioners of Mississippi and Alabama between interior points are about the same for the same distances as the New Orleans and Northeastern rates. In 1887 eleven per cent. of its tonnage was cotton, while its earnings on cotton were \$117,775.00, or 24.7 per cent. of its total revenue from freight, excluding receipts from company's freight. It carried that year 32,349 tons, 30,826 of it to New Orleans, 26,163 of it from Meridian, 4,663 of it from local stations. Its gross earnings and operating expenses per mile were (excluding taxes):

In 1884,	earnings,	\$3,048 ;	expenses,	\$3,431.
“ 1885,	“	\$3,562 ;	“	\$3,041.
“ 1886,	“	\$3,373 ;	“	\$2,716.
“ 1887,	“	\$3,631 ;	“	\$2,820.

It was built in 1883.

8. The rates from Meridian to New Orleans over the New Orleans and Northeastern road is \$2.00 per bale or 4.08 cents per ton per mile on compressed cotton ; on uncompressed \$2.25 per bale. From Meridian over the lines of the Alabama Great Southern, the Cincinnati, New Orleans and Texas Pacific and Eastern connections to New York, the rate is 59 cents per hundred pounds or .78 cents per ton per mile on compressed cotton. To Boston and Lowell the rate is 64 cents per 100 pounds. Of the through rate from Meridian to New York, Boston and Lowell, “Queen and Crescent” roads receive for the 631 miles distance to Cincinnati 32 cents per 100 pounds or 1.01 cents per ton per mile.



9. The rates of the Vicksburg, Shreveport and Pacific railroad on cotton from Shreveport, La., to New Orleans, New York and Boston were from September 1, 1887, the date at which the cotton season begins, to February 1, 1888, and are as follows:

*From Shreveport, La., September 1, 1887, to February 1, 1888,*

	To New Orleans.		New York	Boston
	Comp.	Uncomp.	Compressed	Uncompressed.
V., S. & P. R. R. ....	17	25½	25	25
Beyond.....	13	19½	45	50
Total.....	30	45	70	75

(\$1.50 per bale.)

*And from Monroe, La., between September 1, 1887, and December 8, 1887.*

	To New Orleans.		New York	Boston
	Comp.	Uncomp.	Compressed	Uncompressed
V., S. & P. R. R. ....	30	37	12	12
Beyond.....	10	13	50	55
Total ...	30	50	62	67

(\$1.50 per bale.)

On December 8, 1887, these rates were lowered as follows:

V., S. & P. ....	12	15½	12	12
Beyond .....	8	9½	50	55
Total .....	20	25	62	67

(Per bale, \$1.00.)

And on December 17 they were further lowered as follows:

V., S. & P. ....	10½	13	12	12
Beyond.....	6½	3	45	50
Total.....	17	20	57	62

(Per bale, 85 cts.)

And on February 1, as follows:

V., S. & P. ....	9	13	12	12
Beyond.....	5	7	45	50
Total.....	14	20	57	62

Per bale, 70 cts., at which they now, March 6, 1888, stand

The all-rail rate from Houston, Texas, to New Orleans, a distance of 360 miles, is \$1.00 per bale compressed.

10. On January 23 and 26 and February 25, 1888, shipments of cotton were being made from Vicksburg to New Orleans over the Vicksburg and Meridian and the New Orleans and Northeastern roads at 70 cents per bale, while the New Orleans rate of the Meridian and Vicksburg road published January 23, 1888, was 55 cents per bale. The rate of the New Orleans and Northeastern in January, 1888, by the "Queen and Crescent route" from New Orleans, La., to Lawrence, Mass., was 50 cents per 100 pounds, the substantial equivalent of the rates by water to the same point with the usual allowance for difference in time and insurance.

Complaint is here made, and proof offered in support, of unreasonable charges and preferences and unjust discriminations. The discriminations and preferences complained of are alleged to have diverted to New York, Boston and Lowell a considerable cotton trade which otherwise would have gone to New Orleans from Meridian, Miss., Shreveport, La., and other points on the defendants' roads.

Much more than half the cotton crop is now grown in the four States of Texas, Mississippi, Arkansas and Louisiana. The centre of production is thus brought nearer to New Orleans. Capital, practically without limit, is there available for handling cotton. Store houses, presses and other advantages and facilities for handling, receiving and forwarding are ample. Among the other advantages are extensive wharves and landings at which inland water transportation and railroads from tributary cotton fields meet sea-going transportation to Eastern domestic and to foreign markets. With these commercial advantages the receipts of cotton at New Orleans which in 1859-'60 were nearly one-half (forty-five per cent.) of the entire crop, and in 1870-'71 one third, but little exceeded one-fourth of the crop in 1880-'81 or in any subsequent year. Of these annual receipts not more than one-half is now handled in presses while the quantity passing by in transit annually increases.

The sole cause of this falling off in the proportion of the

crop annually received at that city, the Cotton Exchange finds in the alleged cotton-rate discriminations made by the defendants against New Orleans, diverting, as is claimed, a part of its cotton business to Eastern cities. In urging this view the complainant apparently takes no account of the comparatively recent construction of several all-rail lines of transportation from Meridian and other cotton-shipping points to Eastern ports and markets, nor of the construction of railroad lines connecting, through the ports of Virginia, Georgia and the Carolinas, with water lines to such ports and markets or foreign ports. In thus assigning a cause for a change or modification in the direction of cotton traffic and movement no account is taken of extended facilities or improved methods. Through these, cotton is compressed at interior towns, railroad stations, and in transit. When not yet on its way to market the price it is to bring may be made available on through bills of lading domestic or foreign at the county town next to the cotton field. Such facilities and accommodations were formerly to be obtained only in New Orleans or some other of the large cities. That city is not the place of manufacture or ultimate destination of the cotton received. It is carried there for distribution—to be forwarded. Like other business this is largely controlled and directed by economy in time and cost. Any estimate is faulty which does not include these new conditions among the causes influencing the movements of cotton in the past fifteen years.

It is proven that the defendant companies have separate corporate organizations; their lines are habitually operated as through lines for through business; the same man who holds a general office in one holds the same office in all the companies, and receives one salary which is paid by all, the maker of rates for one makes rates for all, the majority of stock in all the companies is owned by the same interest which elects boards of directors for all. These facts, complainant insists, show a combination of the defendant companies under one control, dominated by the Cincinnati, New Orleans and Texas Pacific Railway Company. It insists, too,

that the discriminations and disadvantages complained of result from this combination so dominated or ruled.

There are some facts in the relations of defendants tending to show such combination and unity of control as might afford opportunity for corporate abuse. If Mr. Collbran, freight and passenger agent of all the defendant companies, has so adjusted the rate of one of their roads as to take freight East by Cincinnati which with a proper adjustment would go by New Orleans, the change so affected made a difference of 770 miles in the length of the haul over and in favor of roads represented by him. Yet it was possible for Mr. Collbran while making rates as the officer of the Vicksburg, Shreveport and Pacific railroad to forget that he held the same office on the connecting roads to Cincinnati but not on the connecting road to New Orleans.

Let the existence of such combination be conceded, and there is no evidence that one of the defendant companies is more responsible for its existence or its acts than another. Any one of them is as much responsible as another, and all are alike responsible for anything done against the provisions of the Interstate Commerce Act. Whether rates and charges are, or are to be, made by the companies combined or acting separately is not so important. The essential requirement is that however made they must be reasonable of themselves, and be so fairly adjusted as to be reasonable in their relations to each other and in their results.

In this proceeding the petition is for equal mileage rates on cotton, and that no rate to New Orleans from cotton-shipping points on the defendants' road shall exceed the rate per ton per mile from the same points to New York, Boston and Lowell. No testimony has been offered on behalf of the complainant as to the relative cost of construction of the several roads or the cost of moving freight equal distances over them. We are without better evidence or information as to what rates would be relatively reasonable than such evidence as is afforded by comparison. Applied to this proceeding the equal mileage rate asked is to be made applicable to a line less than two hundred miles long and to lines more than seventeen hundred miles long.

It is as nearly settled as anything relating to railroad charges can be, that under like conditions freight can be profitably carried long distances at rates proportionately lower than short distances. The movement of freight short distances is necessarily by local trains with frequent stops, and is much more expensive than movement by through trains over long lines. There are some items of cost such as loading and unloading, which are common to long and short hauls, and which make a considerable item in the cost of carrying short distances, but become very slight when apportioned on business over long lines.

The rule of equal mileage rates asked for would often prevent legitimate competition and frequently give a monopoly in transportation to the best and shortest road. Enforce the equal mileage rates asked for at Shreveport and not a bale of cotton would pass over the Vicksburg and Shreveport road to New Orleans, for the Texas Pacific being 81 miles the shorter route would take the freight. The mileage rate over it would be \$7.48 less on the car-load. Put it in force at Meridian and not a bale of cotton would go East over the defendant roads. The East Tennessee, Virginia and Georgia being 260 miles the shorter route would take the freight \$24.24 lower per car-load than its longer rival under the equal mileage rate. In view of such results the equal mileage rate rule insisted upon by complainants must be refused.

In support of the alleged unreasonable rates and charges from Shreveport and Monroe to New Orleans, the specifications of the complaint state the rates from these points to New Orleans to be, in proportion to distance, higher than to New York, Boston and Lawrence over the Vicksburg, Shreveport and Pacific railroad, and the specifications are sustained by the proof. But it does not appear that this company has authority to make rates to any of the points named beyond its own line, or that it is responsible for the through rates except to the extent it shares in them. The connecting roads responsible in part for these through rates are not parties to this proceeding, and the reasonableness of the rates in which they are so directly interested cannot be fairly determined in their absence. *Allen v. Louisville, New Albany & Chicago R'y*

*Co.*, 1 Interstate Commerce Commission Reports, 621. This road, the Vicksburg, Shreveport and Pacific, is wholly in the State of Louisiana. The rates from Shreveport and Monroe to New Orleans here complained of are rates between points in that State, though the carrying between the points is done through the State of Mississippi and over the Vicksburg and Delta ferry, between the two States. This commerce or traffic between points in the same State, the defendants by counsel claim is not interstate but "intrastate" commerce, subject to regulation by the State of Louisiana and without the jurisdiction of this Commission.

All commerce is subject to regulation; that wholly within a State and subject to its sovereign power by the State; that among the States and with foreign nations and not wholly within the sovereign power of any one State by the United States, for the reason that to be effectual, regulation must be uniform, at least not conflicting. Commerce between Shreveport and New Orleans, while crossing on the ferry between Delta, La., and Vicksburg, Miss., is not subject to regulation by the State of Louisiana. The business of transferring freight by the ferry between the two States is interstate commerce. *Gloucester Ferry Company v. Commonwealth of Pa.*, 114 U. S., 196.

While passing through Mississippi, after passing from Louisiana, this commerce is interstate, and subject alone to interstate regulation. It is not subject at any place between Shreveport and New Orleans to regulation by both the State and the Congress. It passes by continuous carriage from Louisiana to, and through, the State of Mississippi. It is not transportation "wholly within one State." It is subject to regulation by the provision of the Act to regulate commerce, and the Commission has jurisdiction to revise the rates when the parties interested in them are before it.

The only remaining question is the reasonableness of the Meridian and New Orleans cotton rates on the New Orleans and Northeastern road. Practically this includes the whole case as presented in the complaint against the defendants.

To protect the rights of shippers, these rates must be reasonable of themselves. They must be reasonable and equi-

table in their relations to prevent undue prejudice or disadvantage to any person or kind of traffic. The rates from Jackson, Miss., by the Illinois Central road and other Mississippi points about the same distance from New Orleans as Meridian are substantially the same as the Meridian and New Orleans rates in question. Neither are the rates complained of excessive in comparison with the rates fixed by the Railroad Commissioners of Mississippi and Alabama for like distances between interior Mississippi and Alabama points. But they are excessive in comparison with the rate from Shreveport to New Orleans over the Vicksburg, Shreveport, Texas Pacific road and connections, which is twice the distance (409 miles), while the rate is one-fourth less. They are excessive in comparison with the Texas Pacific rate, which is one-fourth less for 328 miles between Shreveport and New Orleans—nearly double the distance; or in comparison with rates from Houston, Texas, to New Orleans 360 miles, which is but half the Meridian and New Orleans rate for nearly twice the haul. The share of the New Orleans and Northeastern road in the through rate 70 cents per bale, from Vicksburg to New Orleans was less than 41 cents, or one cent more than one-fifth part the rate in dispute over the same road. The rate of this road from New Orleans to Lawrence is 50 cents per 100 pounds, of which its proportion for the carriage over its whole line is but 9 cents per 100 pounds—less than one-fourth the rate over it in dispute. It is true that these very low rates are greatly the result of water competition at the points of shipment. Yet it can hardly be that they are in any sense remunerative, as we must believe them to be, if the rates complained of are not excessive and unreasonably high. Some of these low rates are over the same line and in the direction of New Orleans. There is nothing in the evidence to show that the cost of service under like conditions is more expensive on the road from Meridian to New Orleans than on the roads carrying to that city from Shreveport or Houston.

As cotton is carried to New Orleans to be forwarded to Eastern destination, the relative rates to the place of destination from Meridian and New Orleans is significant in deter-



mining what it is worth to the Meridian shipper to have this cotton carried to New Orleans. For the purpose of forwarding, it cannot be worth more than twenty cents per 100 pounds if the shipper is to reach the Eastern market at the same cost by way of New Orleans as he can by other routes from Meridian. A reduction to that rate does not seem justifiable in view of the scant earnings and earning power of the road. That this road earns little more than operating expenses is not to be overlooked, but the fact cannot be made to justify rates grossly excessive. Wherever there are more roads than the business at fair rates will remunerate, they must rely upon future earnings for the return of investments and profits.

In the opinion of the Commission, to be reasonable, the rate on compressed cotton from Meridian to New Orleans, 196 miles, should not exceed \$1.50 per bale, which is the rate on one of the associate and defendant roads from Shreveport to New Orleans, a distance of 409 miles. No testimony has been offered or heard as to reasonable rates on uncompressed cotton, and this is left for adjustment by the defendants.

**RICE, ROBINSON AND WITHEROP, v. THE WESTERN  
NEW YORK AND PENNSYLVANIA RAILROAD  
COMPANY.**

■ ■ heard at Washington September 27, 1888.—Decided November 30, 1888.

1. Where unreasonableness of freight rates on oil in car load lots is charged on short local hauls, for example from Titusville, Pa., to Buffalo, N. Y., and the charge is attempted to be sustained on a comparison of these rates with rates on what is usually an inferior grade of oil transported from Titusville through Buffalo to Perth Amboy, N. J., for export, chiefly in the cars of another company, and it appears that upon such shipments destined to Buffalo there are expensive terminal charges, while upon such shipments to Perth Amboy these terminal charges are far less considerable, the circumstances and conditions which control the making of the rates in each instance are substantially dissimilar.
2. In arriving at what is a just and reasonable rate on freight transported by a carrier on a short local line having but a small volume of business, where the cost of transportation is exceptionally great, arising from steep grades, sparse population, and light traffic, these are circumstances and conditions of controlling weight in the making of the rates and can not be overlooked when a question of their reasonableness is involved, and under such circumstances the fact that an independent pipe line from Titusville to Buffalo transports oil between these points at lower rates than the railroad company, constitutes no just reason why the railroad company should be required to reduce its rates to those of the pipe line.
3. Where a change of rates, for example those on the defendant's line in this instance, would involve a reduction of rates on the Dunkirk, Allegheny, Pittsburgh, and other competing lines not parties to this proceeding, and unsettle relative rates in a large extent of territory, such a change ought not to be made unless based upon adequate grounds.
4. The charge of unjust discrimination is not sustained by the evidence in this case.

*Mark J. Heywang*, for Petitioners.

*J. D. Hancock and George Zabriskie*, for Defendant.

**REPORT AND OPINION OF THE COMMISSION.**

**SCHOONMAKER, Commissioner:**

The complaint alleges that the car-load rates charged on refined petroleum oil carried by the defendant from Titusville, Pennsylvania, to Buffalo, New York, are unreasonable and unjust. The petitioners aver that the rates are higher

than the traffic can afford to pay on account of the competition of other refiners at Buffalo, and that they are relatively unjust because they are very considerably greater than the proportion of a through rate accepted by the same carrier for the haul to Buffalo on shipments of oil from the same place to Perth Amboy, on New York harbor.

The material facts are as follows: The petitioners have for several years carried on business as refiners and shippers of oil at Titusville, Pennsylvania, and their business has been large and increasing. They have for a considerable period shipped from ninety to ninety-five per cent. of the refined oil sent from Titusville. For several months before the hearing they were the only shippers of refined oil from that place, the other refiners having ceased the business. Their shipments to Buffalo since April 5, 1887, have averaged about four or five car-loads per week.

The shipments of the petitioners have been made on the road now owned and operated by the defendant during the period they have been in business, a dozen years or more. The defendant company has been in control of the road only since December 1st, 1887. Prior to that time it was in the hands of a receiver and going through a proceeding of foreclosure and re-organization.

Until 1884 the tariff rate on oil carried on this road from Titusville to Buffalo was fifty cents a barrel in car-loads, and sometimes thirty-six cents a barrel, but rebates were allowed, reducing the actual charge to twenty-five cents a barrel. In 1884 the open public rate to Buffalo was made at twenty-five cents a barrel. This rate was continued until the Act to regulate commerce took effect, April 5th, 1887, when new classifications were made by the roads generally, and oil, which had previously been in a commodity class with a special rate, was, by all the roads operating in the same territory, placed in the fifth class, and given the same rate as other articles in that class, which was eight and a half cents per hundred pounds, or thirty-four cents per barrel of four hundred pounds. That rate has since been maintained except for a brief period, during which it was nine cents per hundred pounds.

When the classification and rate were changed the car-load quantity was also changed from fifty barrels to sixty barrels to the car, or from twenty thousand pounds to twenty-four thousand pounds. This change, on account of the size of the cars used, made it necessary to deck-load, or place ten barrels on top of the others, and to make use of certain lumber to support and hold them in their positions. This caused some additional expense to the shipper, amounting to about a dollar a car, and required some more labor and time to load.

The rate from Titusville to Corry, on defendant's line, a distance of twenty-eight miles, is twenty-eight cents a barrel. To some points nearer Titusville it is sixteen cents and twenty cents a barrel. The rate to all points between Corry and Buffalo, a distance of ninety-two miles, is the same as to Buffalo. The distance from Titusville to Buffalo is one hundred and twenty miles.

Empty barrels carried from Buffalo to Titusville are rated fourth class and charged ten cents per hundred, or seven cents per barrel.

The testimony does not show the extent of the oil business at the points between Titusville and Buffalo, but whatever its amount may be it is probably shipped to those points by the petitioners, as there are no other shippers of refined oil from Titusville.

The petitioners also ship refined oil in considerable quantities to Perth Amboy for export. This is carried by the defendant over the same road to Buffalo to a point outside the city and there delivered to the Lehigh Valley, by which it is hauled to Perth Amboy. This transportation is mostly in cars of the Lehigh Valley Company. The through rate from Titusville to Perth Amboy is fifty-two cents a barrel. The proportion of the rate accepted by the defendant is twelve cents a barrel or three cents a hundred pounds. The through rate is determined by the conditions of competition with other lines of road and pipe lines carrying from the same territory to the same destination for export. The distance hauled from Titusville to Perth Amboy is about five hundred and fifty miles.

The system of roads operated by the defendant consists of

three divisions; one from Emporium to Buffalo, called the Buffalo Division; one from Rochester to Olean, being the narrow-gauge system, and called the Rochester Division; one from Olean to Oil City and from Oil City to Buffalo, and from Stoneboro' to New Castle, called the Pittsburgh Division. The Pittsburgh Division routes are two; one from Oil City to Buffalo, using part of the Buffalo Division; and one *via* Brocton, called the Brocton road. Brocton is fifty miles south of Buffalo on Lake Erie. The shipments by the petitioners are over the Brocton route of the Pittsburgh Division.

There are other roads connecting Titusville with Buffalo.

The Dunkirk, Allegheny Valley and Pittsburgh Company operates a road from Titusville to Dunkirk, where it connects with the Lake Shore and Michigan Southern road and the New York, Lake Erie and Western. Both the Nickel Plate and the Lake Shore run parallel with the defendant's road from Brocton to Buffalo. All the roads in the territory are more or less engaged in oil transportation, and the rates are the same on the roads competing with the defendant.

There is a pipe line from Olean to Buffalo through which crude oil is transported to Buffalo and there refined, and this oil comes in competition with that of the petitioners. The pipe line is under independent control and the defendant has no concern in it. Its charges to the public for a distance of seventy miles are stated to be thirty-five cents a barrel for crude oil, but the cost of the service, with a reasonable profit added, is probably much less.

The route over which the petitioners' oil is transported has heavy grades and only half as many cars can be hauled in a train as over the other divisions. At one or two points the trains are divided in sections on account of the grades. For a considerable distance the country along the road is thinly populated, and the local business is light.

The total earnings and expenses of the Pittsburgh Division for the year ending September 30, 1887, as given in the evidence, were as follows:

Total earnings \$480,632.85; total operating expenses, \$445,436.83; total net earnings, \$35,196.02. The gross earn-

ings from all the divisions of the system for the same time were \$2,716,388.67; the gross operating expenses were \$2,231,336.03; gross net earnings, \$485,052.03.

The whole tonnage carried was 3,254,874 tons. Of this amount 2,351,893 tons consisted of coal, lumber, stone and lime, iron, ore and bark, all bearing low rates, being sixth class or under.

The annual report of the carrier filed with the Commission since the hearing shows the following results for the year ending June 30, 1888: Earnings, \$2,949,105.98; operating expenses, \$2,123,540.32; net income from operation, \$825,565.66; deductions from income for interest on funded and floating debt, taxes, rentals and other items, \$480,145.13; leaving a balance of \$345,420.53.

The outstanding mortgage bonds of the defendant are \$8,500,000 of first mortgage at five per cent. interest, and \$20,000,000 of second mortgage at three per cent. for first five years and four per cent. thereafter. The outstanding stock is \$20,000,000.

The question of the reasonableness of the rate complained of is to be determined on all the facts of the case. If the interests of the petitioners only were to be considered it would be an easy matter to order such a reduction of the rate as would give them better advantages in the Buffalo market, and render their business more profitable. But the rights of the carrier and of its creditors and shareholders are to be respected as well as those of the complainants. The complainants have the right to be protected against unreasonable and unjust rates; but their reasonableness and justness must be determined not alone by the exigencies of the complainants' business, but with due regard for the circumstances of the carrier as well. The rate challenged may be high for the distance hauled if that only be regarded. It is also high as compared with the former twenty-five cent rate, and it is high compared with the proportion of the through rate to Perth Amboy on export oil, accepted by the defendant. The argument for a reduction of the Buffalo rate is mainly grounded upon the fact of the former Buffalo rate and upon the proportion received of the export rate. Neither of these,

however, is a standard by which to determine the rate in question. An explanation of both those rates is furnished by the testimony. The twenty-five cent rate was first allowed as a secret rebate, while the established rate was fifty cents. It was afterward made an open rate to the terminal point, while, according to the custom of carriers at that time, higher rates were exacted at the intermediate points. When the Act to regulate commerce took effect this practice became unlawful and could no longer be pursued. The rates had to be so adjusted that no more should be charged for the shorter than for the longer haul. In making these adjustments carriers had the right, and it was their duty, to see that their revenues should be sufficient not only for their operating expenses and the incidents and casualties of their business, but that the rights of their creditors and shareholders should be regarded so far as might be practicable. In view of all these considerations the carriers in the whole territory embracing the traffic in question reached the conclusion that refined oil should be placed in the fifth class, and that it should bear the rate of other articles in that class. This established the rate for the haul to Buffalo at eight and a half cents per hundred pounds, or thirty-four cents per barrel. The defendant probably exercised no controlling influence in establishing the classification or rate. It adopted them in common with other carriers in that territory and other portions of the country, some of which were competitors. The rate of thirty-four cents thus became the uniform rate for all the points on the road except the short distance to Corry.

The through export rate to Perth Amboy was fixed by the conditions of competition and not by the voluntary choice of the rail lines. The pipe-line competition in crude oil refined at the seaboard forced down the rail rates, and a very low rate became necessary in order to meet the competition in the traffic. It gave the benefit of those low rates to the shippers from the oil regions of refined oil, and enabled them to compete in foreign markets with pipe-line oil. The petitioners shared the advantages of these low rates and are large shippers of export oil. The division of the export



rate received by the defendant is evidently barely sufficient to cover the cost of the movement of the oil over its road. It would be palpably unreasonable to require shipments to Buffalo to be carried at that rate. It would be destructive to the carrier.

It was held by the Commission in the case of the Detroit Board of Trade and others against The Grand Trunk Railway Company and others that it is not a violation of the law for a carrier to accept a less division of a through rate for traffic going over its road than the charges to the stations it serves; that the circumstances and conditions are substantially different, and the service entirely dissimilar. The reasons there assigned need not be repeated. This case illustrates the dissimilarity of the conditions and of the service. The haul alone is nearly identical. But the export traffic is carried mainly in cars of another road. Before reaching the terminus in Buffalo they are taken from the tracks of the defendant by the Lehigh Valley Company, and hauled to their destination. The defendant has no terminal expense and no expense for delivery or collecting charges, and the empty cars are brought back and delivered to it again, or perhaps are returned loaded, giving it a haul of freight over its own road.

The shipments to Buffalo, however, involve considerable additional expense. They must be taken to its yards and depots in the city for delivery. This includes the use of its terminal property and whatever cost may be incident to the ownership and maintenance of the property and the force of employees necessary for the business done. All portions of the traffic accommodated by these facilities must necessarily contribute their just share to this expense.

As the oil shipped respectively to Buffalo and to Perth Amboy is destined for different markets and is not at all in competition, no question of discrimination or prejudice can arise. It is also shown by the evidence that the oil sent to Buffalo is of a superior quality to the export oil, and may for that reason bear a higher rate.

The competition in the Buffalo market with oil refined there and conveyed in a crude state through a pipe line from

the oil region is urged as a ground for the reduction of the rate. It is said that the pipe line is under the control of the competing parties, and that the cost of transportation by that mode is merely nominal, affording the petitioners' competitors great advantages in the market. Very likely the pipe-line transportation is materially less expensive and the oil so conveyed can be put on the market for a lower price, but the testimony throws little light on the subject. Whether the petitioners' sales are remunerative or not does not appear. But the fact appears that, notwithstanding the rate complained of, their production and shipments have increased. The rate does not become unlawful, however, by reason of the pipe-line competition, nor is it a sufficient argument to compel a lower rate. The rail-carrier is not responsible for the pipe line nor for the lower means of transportation it affords, and cannot be required at its own expense to make good to a shipper disadvantages of location or of cheaper facilities for reaching markets enjoyed by competitors. It must not unnecessarily or arbitrarily create inequalities, but it is not bound to injure itself to remove differences for which it is not responsible. It is not the duty of a carrier to regulate markets. If by reason of competition in transportation or the condition of markets a carrier sees fit to move traffic at very low rates in order to participate in the business, that may be done and often is done, but that is a very different matter from compelling it to reduce all its rates to equalize competition between shippers from different fields of supply and by different and unrelated routes.

The point was made, and some evidence was given to show, that the rate was made at the behest of and to favor the pipe-line shippers, but the proof was insufficient to establish the fact. Had that fact satisfactorily appeared the case would have presented a different aspect.

It is insisted by the defendant that in view of the character of the route over which the oil is transported, the heavy grades, the small number of cars that can be hauled in a train, the necessity to take the trains in sections over some of the summits, the comparatively light amount of traffic and the nature of most of the traffic, like coal, lumber, iron, and

but necessarily bearing low rates, and the heavy funded debt of the company, the rate in question is reasonable and just, and can not be lowered with justice to the carrier. It is also insisted that, except for the revenue derived from the other divisions, the rates on this division would have to be increased to maintain the property. There is force in these considerations. The particulars enumerated are elements in arriving at the reasonableness of a rate, and can not be arbitrarily disregarded. In the absence of other controlling factors they may determine the question. They have that effect to a large extent in this case.

The conditions, however, may change so that a lower rate might be warranted. The report filed by the defendant with the Commission and covering a period nine months later than the exhibits in evidence, shows a material improvement in its revenues. It is to be presumed that the defendant will recognize the propriety of giving its patrons the benefit of a reduction as soon as it can reasonably be made.

Another consideration is not to be overlooked. A reduction of the rate on the defendant's road would necessarily occasion a reduction on the Dunkirk, Allegheny Valley and Pittsburgh road and on other competing roads. A like reduction would also be required to divers points reached by other lines, to which the same rate is made as to Buffalo. Those carriers have not been heard, and injustice might be done to them. The rates in that territory are so related on the different roads that a change on one unsettles others. A change requires, therefore, consideration and caution, and should be based on adequate grounds.

A point was made respecting the additional expense of deck-loading. It is not a very important item. But a carrier in defining a car-load and fixing the rate should furnish a car adapted to carry properly the quantity designated, and not put the shipper to any expense to fit up the car. This expense would seem to be in excess of the tariff rate and unlawful.

Upon all the facts of the case the conclusion of the Commission is that the rate complained of is not shown to be unreasonable, and the complaint is therefore not sustained.

SECOND ANNUAL REPORT

OF THE

INTERSTATE COMMERCE COMMISSION.

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HON. WILLIAM F. VILAS,

*Secretary of the Interior:*

SIR: The undersigned, Commissioners appointed under the Act to regulate commerce, approved February 4, 1887, in submitting this their Second Annual Report as required by the twenty-first section of said Act, have the honor to say:

From the best information now available, the railroad mileage of the country on the 30th day of June, 1888, is estimated at 152,781, of which 2,312 miles have been completed and brought into operation within the six months preceding that day. The railway construction in 1886 was 8,471 miles; in 1887 it was 12,688 miles. The number of corporations represented in the mileage is 1,251, but by reason of leases or other contract arrangements many corporations hold control of and operate one or more roads owned by other corporations, and the whole number making reports of operation at the date named was 665.

WHAT CARRIERS ARE SUBJECT TO THE ACT.

The carriers who are subject to the Act are those who are "engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia," etc.

There are many railroads whose lines are entirely within

the limits of a single State or Territory which are controlled or managed with complete independence, but it is doubtful if, with the exception of the municipal street and elevated roads and such roads as are purely adjuncts of mines or other local interests, there is one which does not to some extent engage in interstate traffic. All of them have traffic arrangements of some sort, under which they issue passenger tickets over other roads, or honor those which other carriers issue, or issue or accept through bills of lading, or in some other way participate in interstate business. To render the roads most useful to the stockholders and most convenient to the public, this becomes a necessity. But when this is done by any road, the Commission understands that the Act to regulate commerce applies to the party operating it; that such party should respond to the call for an annual report, and in the management of its interstate business should conform to the principles which the Act prescribes.

There may, nevertheless, be some question as to the right of a State road which engages in interstate traffic to restrict its participation at pleasure, and thereby escape obligations which the Act imposes.

In the performance of its duties during the past year it has been made apparent to the Commission that the opinion is prevalent in many quarters that railroad companies whose lines are wholly within a single State and are managed independently are not subject to the Act to regulate commerce, except in so far as by entering into joint arrangements with other companies they engage in interstate traffic, and that even in such cases the regulation to which they are subject is limited to the traffic which is covered by the joint arrangements.

In numerous cases the officers of such companies expressed surprise when they were called upon to make the annual report contemplated by section 20, and were at first inclined to insist upon their legal right to exemption. But the right of Congress to require from any corporation or organization which to any extent is engaged in interstate commerce a report upon such commerce, and upon all matters respecting the conditions and the work connected therewith which it

may be important to have known, in order that the commerce may be most intelligently and effectually regulated, would seem to be very clear. And if any report may be required it would seem equally clear that it may be made to cover, in the case of a carrier whose line is entirely within a State, all the particulars in respect to organization, capital, debt and working operations, which carriers whose lines are interstate are required to furnish.

State traffic and interstate traffic are so intimately and inseparably blended in the provisions which the carriers make therefor; in the carriage, the management, the handling, and the rates imposed upon the one are so likely to affect those charged upon the other, that for the proper regulation of either species of traffic as carried on by a carrier engaged in both, it is indispensable that a complete exhibit as to both shall be made. And it is but just to say here in behalf of all the carriers who were first inclined to object to making a report that when its importance was presented to them in correspondence, and especially the desirability of making the railroad statistics throughout the entire country as complete as possible, not merely for the immediate objects of the Commission but for the purposes of permanent public record, a courteous response was in general made and a report furnished or a promise of it given. The work of the statistician was nevertheless very much delayed by the necessary correspondence, and even yet it is not so complete as it would have been if all the companies had recognized from the first that the obligation to make report existed.

Another topic in this connection which has been the subject of thought concerns the responsibility of a carrier operating a State line when for any reason in participating in interstate traffic it elects to limit the participation to one or to a few species of traffic. The claim has been made by some carriers that the participation may be limited or extended at pleasure; that they may form traffic arrangements for some classes of business and decline to make them as to others, and that over their discretion in the matter there can be neither control nor supervision. The fact that traffic

arrangements and joint rates must necessarily be the subject of negotiation and agreement between carriers, and that no authority has in terms been conferred by law for the making of joint rates for them against their will is supposed to be conclusive in favor of this view.

The Commission has not believed this view to be correct. It has believed and still believes that when a carrier is engaged in interstate commerce to even a limited extent, it must conduct such commerce under the requirements of the Act. It must not give undue or unreasonable preferences or advantages to any particular description of traffic; it must afford reasonable, proper and equal facilities for the interchange of traffic; it must not be guilty of unjust discrimination. Now, if one species of traffic were provided for by a common arrangement between two or more roads, and the same roads should decline or for any reason neglect to make corresponding arrangements in respect to traffic that would be competitive, the unjust discrimination would in some cases be very plain. Whenever it should appear a violation of law would be equally plain, and the party wronged would clearly, it is believed, be entitled to legal remedy. But when the proper remedy came to be considered it might possibly, on investigation, appear very plain that nothing would give effectual relief except a requirement that the carriers guilty of the wrong should carry the competing traffic at rates prescribed for them, but measured, nevertheless, by those which they themselves had established for the traffic they had undertaken to favor.

If this may not be done the law against unjust discrimination might in a great many cases be rendered futile, and favoritism be practiced by interstate carriers at discretion. But unjust discrimination might not be altogether limited to cases like those supposed; it might be practiced in refusing to make joint rates for a traffic not competitive to any that was actually provided for by the joint arrangements. The Act applies to the carriers as legal entities and prescribes for them the obligation of relative fairness, and when it is made to appear that they are guilty of subjecting "any particular species of traffic to any undue or unreasonable prejudice or



disadvantage in any respect whatever," it intends that the wrong shall be corrected. It does not apparently intend that the carriers shall be at liberty to make provision for every branch of trade but one and leave that one to be crushed with a burden of successive and combined local rates. In all this there is no hardship whatever to the carriers. The rule prescribed by the statute is one of common justice, and the more fully it is complied with the greater will be the claim of the carriers upon the public favor. It is a rule that ought to be voluntarily applied, regardless of any requirement of law on the subject.

In one case decided by the Commission, it appeared that a railroad company chartered for the building of a short road wholly within one State, had built and was still owning it, but had never provided itself with rolling stock, and never itself operated the road. Instead thereof the road was used and operated as a means of conducting interstate traffic from certain coal mines upon it by companies owning connecting interstate roads. Owners of other mines on the short road offered interstate traffic for carriage and it was refused on the claim that the road was not subject to the Act to regulate commerce. The Commission, on complaint being made to it, held this claim to be unfounded. It was its opinion that the road thus used was one of the instrumentalities of interstate commerce, and the carriers operating it in respect to the traffic offered them were subject to the same responsibilities and duties that they would be if in ownership it constituted a part of their lines. This decision was promptly accepted and conformed to, and the cause of complaint was thereby removed.

Some further suggestions upon this general subject will be found in subsequent portions of this report.

#### EXPRESS COMPANIES.

In the first annual report of the Commission attention was called to the carriers who conduct the express business of the country. It was then stated that of these carriers there are several classes. Some are partnerships or joint-

stock associations, while some are corporations either specially chartered or created under the authority of general incorporation acts. All these have their several names as express companies, and as such they make bargains with the railroad companies for the transportation of their freight and of their agents at a compensation agreed upon. This compensation is likely to be a definite share in the gross receipts from the traffic; and each of the several express companies has a territory of its own, so that each railroad company carries the freight and the agents of one only.

It was further stated, however, that certain of the railroad companies had undertaken to do the express business on their own lines through their own agencies. The Baltimore and Ohio did this for a time, and then sold the business to one of the existing express companies. Some of the western railroads combine for the purpose, and for convenience create a nominal corporation to do the business over their several lines and divide the net proceeds. In organization and general methods this corporation resembles some of the fast freight lines of the country, the railroad companies being the nominal corporators, and the business done being in every sense railroad business, though for convenience carried on by the several companies through a common agency.

It was further pointed out that there is no recognized distinction between what shall be considered express freight and what not, except that which concerns the method of transportation. Express freight is commonly, though not always, taken in cars attached to passenger trains, and, however taken, it is expedited beyond what is possible with freight in general; any freight is taken express for which the owner consents to pay the charges. These charges are much greater than are made upon ordinary freight of like or similar kind.

The Commission then proceeded to state and to consider the question whether this express business was subject to regulation under the Act to regulate commerce. The objections made thereto by the several express companies on grounds of convenience were considered and pronounced to

be of little force. The further and more important question, whether the language of the Act by fair construction applied to them was not found to be easy of solution. So far as the business was done by the railroad companies themselves, either directly by their managing officers or indirectly and through nominal corporations created for the purpose, the Commission believed it was subject to their regulation, but it did not think that the terms of the Act were sufficiently clear to warrant its asserting jurisdiction over the express companies which are independent of the railroads. In conclusion it was said :

The Commission is of opinion that the question is one which Congress ought to put beyond question, by either expressly or by designation including the express companies, or by excluding them. The railroad companies that see fit to do their own express business ought not, either as respects principles or methods, to be subjected, in the management of such business, to any different control or regulation from that which the independent express companies of the country are required to obey. If the latter are not within the contemplation of the Act to regulate commerce, all express business, by whomsoever carried on, should be excluded. Justice to the public, as well as to that business, demands that it be governed throughout the country by rules of general application, which shall not be dependent on mere forms or on the will of those who happen to be in the control of the railroads, and therefore have the power to determine by what agencies this important portion of the business of the roads shall be conducted.

The subject thus brought to the attention of Congress has not since then in any manner been taken in hand by the Commission. It has refrained from exercising such jurisdiction as it possessed, for the reason that a limited and sectional regulation, when the great mass of the business was not touched by the rules established, would be at best of little value, and might seem unjustly to put the business regulated at relative disadvantage to that which did not submit to the like control. Nor has the subject in the meantime been acted upon by Congress.

In a general way it is known to every citizen that the express business of the country aggregates an enormous volume. What this aggregate is, however, is not known, and there are no statistics in any public office which purport to give it. The national census does not show it; it is not

reported to Congress. By far the larger proportion of all this business is done upon the railroads of the country, and by the use of facilities which railroad companies supply. The state gives permission to build the roads; it employs the eminent domain to compel private citizens to submit to their being built across their lands, and it subjects the franchise to the condition that the persons and the property of the people shall be impartially and at reasonable rates transported on the roads when they are built. The express company takes advantage of the State grants and super-imposes an additional burden upon the eminent domain for the benefit of a business which, though resembling the ordinary business of a carrier by rail, is yet so far distinct that it escapes the restrictions which are imposed upon such carrier as completely as if it were in no manner dependent upon the sovereign grants for the means whereby it may be carried on.

The founders of the express business probably never contemplated its present growth in volume, or its expansion in subjects and methods. It began with the carriage of money and other valuable packages or parcels which could not be conveniently or profitably sent as freight; and though freight was also taken express where special care or charge was needed, yet the business in the carriage of freight proper was for a long time of comparatively little importance, and the provision for it was meagre compared to what it now is. The ordinary arrangements of the railroad company were supposed to be adequate to the demands of freight transportation, and the services of the expressman were not demanded in respect of it.

The whole character of the carrying business of the country has greatly changed since the express business had its origin. Time has become a far more important factor than it was then; many kinds of business have sprung up to which speedy delivery is of vital importance. Of these the business of dealing in fresh fruit and vegetables is perhaps most conspicuous; the fruits of the Gulf States are sold in every Northern State as well as in Canada, and those of California find their way to the Atlantic seaboard. Fresh

fish and oysters also find markets thousands of miles from where they are taken. But these must be handled with care and delivered promptly, or they suffer depreciation and perhaps total loss. The merchant in the interior, who formerly replenished his stock twice in the year, keeping necessarily a considerable capital invested in goods that might not find a purchaser, now finds it to his advantage to order his goods day by day to meet the immediate demands of his customers, which he can only do by the aid of a delivery more prompt than that which the freight lines afford. These are only illustrations of the general truth that time, in the transportation business of the country, has become a factor of vastly more importance than formerly, and that the agency which makes speediest delivery is likely to be the one called into requisition, even though its charges may be much the greater.

It thus happens that, in respect to a very large proportion of the freight which is offered for transportation, the railroad company and the express company, though not antagonistic, still occupy the position of competitors. Thus, if garden vegetables are to be taken from an interior point to one of the seaboard cities, the railroad company offers to take it as ordinary freight at a rate named, say twenty-five cents a hundred pounds, and deliver it by trains which average, perhaps, fifteen miles an hour, at its station in the city of destination, where the consignee can call and obtain it. The express company, on the other hand, offers to convey it for a compensation perhaps four times as great, by trains averaging thirty or forty miles an hour, and to deliver it to the consignee at his place of business. The question which these offers present to the consignee is, whether the time saved and the delivery at the consignee's place of business are of such value to the consignee as to constitute an inducement to the payment of the additional compensation demanded.

The peculiarity of this competition is, that the railroad company receives the larger share of what is paid to the express company, and this share is so much greater than it would receive for the carriage of the same property as ordinary freight that it may be tempted to make its own offers

of carriage less favorable than it ought in order to discourage their being accepted. Thus, the shipper of fresh vegetables might perhaps send as ordinary freight by a train moving twenty-five miles an hour, when if it moved only fifteen miles an hour he would feel compelled to send by express. Any special inconveniences that might attend either the loading or unloading of his freight might equally determine him against the use of the ordinary railroad facilities and induce a resort to the agency by whose assistance these inconveniences would be avoided. When thus in the competition for carriage the interest of the railroad company is quite as likely to be against as in favor of its own offer being accepted, it is hardly to be expected that its managers will at all times show the same anxiety to make the best possible freight arrangements as they would if their interests all lay in that direction. Nor would it be surprising if a suspicion should occasionally be encountered that the service, as to some kinds of freight, was made less satisfactory than it ought to be, with a willingness, if not a purpose, that the express business should be gained thereby. In a case recently before the Commission, in which complaint was made of unsatisfactory service, it appeared that the express charges on the property carried were four times the charge which was made when it was taken as ordinary freight, and that one of the complaining parties had deemed it for his interest to send by express and pay this extra charge, though he would not have done so, if as ordinary freight, his property had been handled to his satisfaction. Of the justice of his complaint nothing will be said here, but it is easy to see that when thus the freight and the express business are mutually related, and the manner in which the one is handled must largely affect the volume and the profit of the other, the question whether the freight service is what it ought to be is one which cannot be determined without careful consideration of how the express business bears upon it; and the difficulty in solving it satisfactorily is increased by the fact that the carriage by express is not by law subject to the same rules which control the carriage as ordinary freight.

The feature of the express business which during the past

year has been the subject of most frequent complaint, has related to the refusal of several of the companies, when receiving freight from another for delivery by itself, to either advance the charges of the company from which the freight is received, or to collect them for such company from the consignee on delivery. The refusal while it continued is supposed to have rested on no better reason than unfriendly rivalry, and it subjected parties employing these agencies to a great many vexations which would be entirely avoided if the express companies were required, as the railroad companies are, to "afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of \* \* \* property to and from their several lines and those connecting therewith."

#### ADMINISTRATIVE WORK OF THE COMMISSION.

The general administration of the Act during the year has been steady and progressive, and presents few features calling for special remark. In Appendix B is given a brief statement of the formal complaints passed upon by the Commission, with the points decided, and Appendix C contains a further statement of the disposition or the present situation of all formal complaints made during the year under the thirteenth section of the act. The great majority of complaints, however, have been laid before the Commission informally, and have either presented matters over which the Commission has no jurisdiction, or they have been adjusted with its assistance by correspondence with the complainants and the carriers, or in some other manner disposed of by the parties themselves. In most cases where a complaint has appeared to be *prima facie* well founded, the carriers have shown a disposition to consider it in an accommodating spirit, and have not been inclined to insist upon formal complaints or formal adjudications.

The most frequent complaint made has been of rates supposed to be excessive. It is commonly found that the parties complaining advance the fact as proof of the excess that less proportionate rates are made by the same carrier on other



parts of its line, or that lower rates are made by other carriers in the same or other sections of the country. This evidence by itself, and without a showing of circumstances under which the rates are made, is not of much value; but the fact that opinions on the reasonableness of rates are commonly formed upon comparisons of the kind mentioned, and that great apparent disparities are continually found to be productive of discontent, is forcible reason for every carrier to keep at least its own rates in due proportion just as completely as may be found practicable, and to eliminate, when it may be done, all circumstances which have forced the laying of exceptional burdens on any locality or any species of traffic. It is always of importance that rates shall appear to be fair, as well as be fair in fact.

In one case decided by the Commission, the principle was laid down that carriers in making rates can not arrange them from an exclusive regard to their own interest, but that they must respect the interests of those who may have occasion to employ their services, and subordinate their own interests to the rules of relative equality and justice which the act prescribes. The case was one of the transportation of railroad ties. Heretofore it is believed not to have been unusual for railroad companies to class and rate this species of property high in order to prevent its transportation to a distance, thereby keeping the ties obtainable near their own lines for their own use and excluding such competition by other roads as would tend to advance the market value. The Commission held this to be unwarrantable, and declared it to be the duty of the carriers to make the classification and rating of this species of property correspond to that of other property of the same general character and of corresponding value.

The principle which required this ruling is not restricted to particular states of fact; it is one of general application and should be applied by the carriers wherever the reasons on which it is based are found to exist. The obligation to do this has not always been kept in mind. It is believed that railroad companies in some cases have practiced the giving for season or mileage tickets to the keepers of sea-side

resorts, rates which were exceptionally low, while declining to give corresponding rates to other points on their lines. The ground on which this is done is understood to be, that though the number of such tickets sold may be small, the occupations of those who purchase them and the inducements to amusement and recreation which they supply, naturally attract to their resorts many other persons who pay the regular and customary rates, and the carrier therefore consults its interest in accommodating the owners of such resorts with a specially favorable ticket. But this is not believed to be a sufficient reason for the discrimination. A large shipper of freight might on the same grounds and with as much legal justification be given exceptionally low rates because of the business his influence brings to the carrier. The Act does not contemplate that influence shall, either directly or indirectly, be paid for by giving advantages in transportation, and a discrimination that is unjust is not rendered legal by the carrier finding a profit in it.

The Commission is confident that during the year very considerable advance has been made in the direction of putting rates upon a better proportionate basis than they have been on heretofore, and to any extent in which this has been accomplished the public is benefited. Comparatively little fault is now found with the general principles on which freight rates are claimed to be adjusted; it is from the misapplication of those principles that inequalities and injustice most commonly result.

Early in the present year the Commission became satisfied that underbilling of freight was being somewhat extensively practiced. This was not confined to any particular road or group of roads, but was prevalent even on lines which at the time were protesting most emphatically their conformity to the requirements of the law. Officers and managers of the roads condemned the practice, but nevertheless traffic was admitted upon their lines on which the billing was short, when they could have known and ought to have known the facts. The Commission made careful investigation of the whole subject, and published its conclusions.

One difficulty in dealing with this device whereby particular shippers obtained unjust advantages was encountered in the fact that in each particular case the carriers assert that they did not know of its existence; that they were imposed upon by the shipper or were unwittingly led into error by the fraud or ignorance of an agent, and proof to the contrary was difficult to obtain. Nevertheless, in most cases some degree of negligence not easily excused was apparent. The Commission considered at some length the excuses offered, and the result of its action is believed to have been that the carriers became more active and vigilant in holding their agents to their duty, and in many cases by concurrent action established precautions for the detection of such frauds by the shippers as had theretofore at times been perpetrated with impunity. These precautions rendered future excuses on their part less plausible, and the frauds, it is believed, have in consequence become very much less common than formerly. But they are undoubtedly still occasionally committed, sometimes with the connivance of agents, and sometimes through deceptions which the shippers practice upon them. The Commission thought then and still thinks that the Act ought to be so amended as to impose a penalty upon shippers who, by false billing, false classification, false weighing or false report of weight, or by other devices, knowingly and willfully obtain transportation for their property at less than the regular rates.

Only two complaints were made during the year of the giving by carriers of free transportation of persons as an unlawful discrimination; neither of these was found to possess any merit, and the complaints were dismissed upon hearing. The Commission has every reason to believe that free transportation of persons not entitled to it under the exceptions contained in the Act is now rare, except when given in consideration of real or pretended services, or as commissions are paid, or when ostensibly limited to State transportation. Passes are undoubtedly given to a considerable extent which are made good between points all of which are in the same State, the party giving them understanding that the Act is not violated thereby.

It is probable that in some cases this understanding is erroneous. When the pass is issued for use in respect to interstate traffic, so that the giving of it is in effect the giving of a preference or advantage to the recipient over others not thus favored, it is believed that the limitation of use within a single State is unimportant to the question of legality. A rebate given on interstate traffic, but measured by the transportation within a particular State, would be no less illegal than if allowed regardless of such a limitation, and such a case seems strictly analogous to a pass given to influence interstate traffic but limited in like manner. The important fact is that something of value is given; and the effect of giving it is such an unjust discrimination as the statute condemns. And it may be doubted whether the limited pass is not illegal in any case, not coming within the exceptions of the statute, where it is given to be used or is actually used for free transportation on part of an interstate journey.

The decisions made by the Commission within the year, when against the carriers, have been accepted and conformed to with reasonable promptitude, except in two instances. The first of these was the case of the Kentucky and Indiana Bridge Company against the Louisville and Nashville Railroad Company, which involved some very important questions of law as well as of fact, and was also, as the Commission understood, only one part of a controversy some branches of which were not subject to the authority of the Commission and had already been made to some extent the subject of judicial cognizance. It was entirely proper, therefore, that the whole controversy should be referred to the proper judicial tribunal, and this is understood to have been done. The other case is still the subject of consideration by the Commission.

#### THE LONG AND SHORT HAUL PROVISION.

Since the issue of the first annual report of the Commission very much has been done in the direction of bringing railroad rates into conformity with the general rule of the fourth section of the Act, which makes it unlawful for the carrier

"to charge or receive any greater compensation in the aggregate for the transportation of passengers or of the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance." In the section of the country north of the Potomac and the Ohio and east of the Missouri, the cases in which the greater charge is made for the shorter transportation are few, and their circumstances are such that complaint is not often made that they operate oppressively.

In July of the present year, however, the Chicago, St. Paul and Kansas City Railroad Company, a company having a line from Chicago to St. Paul and Minneapolis, and which theretofore had not claimed any privilege under the Act of making the greater charge on the shorter hauls, announced to the Commission its purpose to reduce very largely its rates between the termini of its road without reducing intermediate rates, the effect of which would be that from either terminus to a number of intermediate stations the rates upon any consignment would be greater than they would be on the same property if carried through to the other terminus.

The company laid down two propositions as justifying its action: first, its rates to intermediate stations were perfectly just and reasonable, and therefore there was no injustice in maintaining them, and second, the rates between its terminal points were forced down by the unfair competition of another line, which had previously promulgated the like reduced rates and thus compelled its competitors to meet them. The reduced rates, it was insisted, were altogether below what was reasonable, but the action of the other company made them all that it was possible to obtain, and established conditions and circumstances so dissimilar to those prevailing at intermediate stations as to justify the action taken and bring it within the protection of the statute. The Commission immediately ordered an investigation and gave very full hearing to all parties interested at a convenient point in the territory affected by the rates.

On the hearing it was made to appear that the facts regarding the reduction of rates between the terminal points

were as had been claimed; a competing company had reduced them to a point much below what they had commonly been on all the roads, and the evidence tended very strongly to show that this made them unreasonably low. The road which was being investigated claimed that it had no alternative but to meet them. There was no such pressure of competition at the intermediate stations as was felt at the terminals, and the circumstances and conditions governing the making of rates were, therefore, it was said, altogether different at the terminal stations to what they were elsewhere. The company could make them what they ought to be at the intermediate stations, but was compelled to accept what the competitor would allow it to get at the termini.

The reasoning seemed strong and was certainly plausible. But the question involved was a question of the construction of the Act; its answer was to be arrived at on consideration of what was probably the legislative intent. It was seen that the circumstances and conditions relied upon as entitling the carrier to make the exceptional rates were not circumstances growing out of natural causes; they were not the outcome of competition by water routes; there was no peculiarity of the line which would make the rates at the termini and at other stations relatively just; the only dissimilarity in the circumstances and conditions which attended the making of the rates at the different points, was that at the termini there was sharp railroad competition and at the intermediate stations there was not.

But this was a state of things that at the pleasure of the railroad companies acting generally, or even of single companies disposed to act in hostility, might be made to exist at any point of railroad connection in the country; and if the greater charge on the shorter haul was admissible in the case under investigation the rule of the fourth section would be of no practical value whatever. Any railroad company might by its action absolve a competitor from its obligation, and be itself absolved in return. The legislature never intended this consequence. It did not intend, as the Commission believed, that the carriers subject to the law should at pleasure thus make the rule of the statute ineffectual.

The carrier under investigation conformed to this conclusion, and graded its rates accordingly, and the objectionable rates made by the carrier complained of were also soon discontinued.

The trans-continental rates have received a large share of the attention of the Commission during the year.

Among the cases which were mentioned in the former report as then pending were those of the Lincoln, Nebraska, Board of Trade against the Burlington and Missouri River Railroad Company and others, and Plummer, Perry & Co. against the Union Pacific Railway Company and the Southern Pacific Company. In these cases it was claimed that the fourth section of the Act to regulate commerce had been violated in charging from Pacific Coast points to Lincoln more for the transportation of freights than was charged to Omaha. The cases were fully heard at Lincoln, where a large amount of evidence was taken. They were found to present peculiar and difficult questions growing out of conditions which could not be here stated in a paragraph, if it were important to state them now, which it is not.

The cases were taken under advisement, but before decision was announced the railroad companies forming the through lines changed their tariffs so as to give to Lincoln the same rates from the Pacific Coast that were given to Omaha. As this was all that could be claimed in respect to rates for the future, the Commission abstained from any expression of opinion and gave leave to withdraw the petitions. Money claims were made against the defendants for prior violation of the law, but as the opinion of the Commission upon them would not be binding upon the parties, the Commission followed its usual course in such cases and refrained from expressing it.

The result thus obtained was largely determined by the action of the Commission in the case of Martin against the Southern Pacific Company and others, known as the Denver case. This case presented the question whether the trans-continental roads could properly exact a greater charge for transportation from the Pacific Coast to Denver than to



Kansas City, some 600 miles further east. It was fully heard and was treated as involving the entire subject of relative rates as between the shorter and longer hauls on all the trans-continental lines.

At the time of the hearing the carriers relied upon competition by the Canadian Pacific Railroad Company, a foreign corporation, as the justification for the rates made. It appeared that about the time when the Act to regulate commerce took effect, the Canadian line, then recently opened from Vancouver Sound to various points of connection with lines in the Eastern States, entered upon an active competition for through business in both directions between all Pacific Coast points and all parts of the United States on or east of the Missouri river. Its policy was to make rates upon leading articles a little below the rates made by trans-continental lines in this country. This was designed to compel the recognition by the latter of a general principle which it asserted, that rates upon a circuitous line between like terminals should be lower than rates upon more direct lines, in order to enable the longer route to obtain some portion of the traffic; or, in other words, that natural disadvantages, operating to the prejudice of a route competing for the business in question, should be compensated by the privilege of offering to the public a lower rate.

In pursuance of this plan it arranged with a steamer line leaving San Francisco weekly for Vancouver to take shipments of freight upon through rates to various points in the Eastern States; this competition was so managed as to make itself felt successively upon different articles, consigned to various points, and was so persistently followed up that it seriously affected all through trans-continental business in both directions. Through rates were reduced on April 27, 1887, and again on May 25, 1887, and at the time of the hearing of the Denver case, in December, 1887, remained at figures which were extremely low in consideration of the length of haul and the expensive operation of the roads concerned in the traffic. Intermediate and local rates meanwhile remained as originally established on April 5, 1887.

The pressure of this situation in respect to the through

business brought about an arrangement among the lines in January, 1888, by which the Canadian Pacific became a member of the trans-continental association of roads, and agreed, with the other lines, upon through rates considerably higher than the low rates which previously prevailed. It was understood that the Canadian Pacific should be allowed certain differentials, or, in other words, that the charges by that line should be less by from five to ten per cent. on the various classes than the rates charged upon the lines situated in the United States. And, no differentials being provided for at Missouri River points, the Canadian road was understood as retiring from competition in respect to that business. This plan of agreed rates with differentials in favor of the longer Canadian route still remains in operation.

One practical effect of the arrangement thus consummated was to raise local rates at points near the terminals of the different roads, by precisely the same amount that was added to the new through rates. When the hearing in Nebraska took place, in March, 1888, the whole subject as it then stood was carefully investigated, and a decision in the Denver case was announced in May, to the effect that traffic from the Pacific coast to Missouri River points did not then appear to be subject to any actual competition of controlling force by carriers not subject to the provisions of the law, and that there was no fact apparent which could justify the greater charge for the shorter haul in the case presented.

This decision was accepted by the carriers as requiring the adoption of a new system of making rates upon the trans-continental lines. The subject was entered upon, and on September 1, 1888, an entirely new system of tariffs was prepared and put in operation, affecting rates to and from all points upon nearly forty thousand miles of road, operated by eighteen different companies.

The changes made were very radical, and were in the direction of conformity to the fourth section of the law. They resulted in many reductions at intermediate points, in part compensated by some increase upon through business. As at first adjusted serious inconsistencies and discriminations were discerned in the schedules, which attracted public atten-

tion, and were investigated by the Commission. Many changes were made and more are in contemplation; suggestions made by the Commission to the representatives of the lines have been promptly acceded to. The ocean competition is still recognized by the roads to some extent as controlling through rates upon overland traffic, and is relied upon as a justification for somewhat higher rates to points this side of the Pacific coast terminals than are made to points situated directly on the Pacific coast; it is claimed that freight is taken to the latter points at low rates by clipper ships, to be there consumed or sent forward to points in the vicinity at local charges. With this exception, and some others of minor importance, the rule of the short haul provision of the law has been put in force upon the trans-continental roads, where its operation and effect can be observed under what now appear to be favorable conditions.

In the Southern and Southwestern States the Commission has had reason to think the carriers were moving more slowly in bringing their tariffs into conformity with the general statutory rule than in other sections. The Commission recognizes the existence of peculiar difficulties in those States, growing out of the fact that water competition is felt at so many points, at some of which it is of controlling force, but this would not excuse the failure to keep the rule of the statute in view, or to press towards it as rapidly as was found to be practicable. Not being satisfied that this duty has been sufficiently apprehended and observed by the carriers, the Commission has ordered an investigation to be made of the whole subject on the 18th instant, at its rooms in Washington, when it is intended to make a thorough examination of the existing rate sheets, and to give all parties concerned an opportunity to be heard.

It is not improbable that the carriers by land, in competing with carriers by water, have sometimes pressed the competition beyond what was reasonable and beyond what the law would justify. Rate sheets in some cases indicate that carriers by rail consider themselves justified in making any rate, no matter how low, that will take business away

from a water carrier. When, however, the question is one of justification for making the greater charge on the shorter haul, the reasonableness of the lesser charge is in issue as much as that of the greater, and the justification ought to involve considerations affecting the public good.

But it can hardly be for the public good that carriers, by water should be subjected to unreasonable and excessive competition; they ought, as much as the carriers by rail, to be allowed to charge remunerative rates; and the carrier by rail does not therefore make out a complete case when called upon to justify extraordinary differences between his rates at a point of water competition and at other points, when he shows that at the former he made the very low rates because otherwise he would not have obtained the business. It may be that when the case is examined in the light of the public interest it will be manifest that he ought not to have had it; that in taking it he had pressed the competition to an extreme, which, while it harmed the carrier by boat, was harmful also to points on the railroad by reason of the great disparity in rates which it created, and also because of its producing so little revenue that the burden upon other traffic was increased in consequence.

Undoubtedly the public good is best subserved when all the carriers which the needs of the country require are suffered to do business at reasonable compensation, and when their rates as between all their patrons are relatively as nearly equal and just as under the circumstances they can be made. These are facts which are sometimes overlooked in the making up of railroad rate sheets when water competition is to be taken into account and its legitimate influence allowed for.

A pending case, not yet fully submitted, presents the question of justification of rates from local stations on the New York, Philadelphia and Norfolk Railroad for the transportation of freights to New York and Philadelphia, which are greater than are made from Norfolk to the same destinations. The contention of the railroad companies is that at Norfolk it does no more than to meet the rates made by the steamers, and that if required to equalize its rates as between Norfolk

and other stations it would be forced to raise the rates at Norfolk, since the lowering of them at other points would be ruinous. But to raise the rates at Norfolk would be to go out of the business at that point.

A railroad company disposed to deal fairly with steamboat owners in the competition for business is exposed to some disadvantages growing out of the fact that its competitor is not required to publish his rates or to maintain them. If the regular lines of boats were required by law to do this, it would tend to put the competition between carriers by boat and carriers by rail on a better footing, and would, as we believe, be in the end advantageous to both. A fair and open competition is always better than one in which one party or the other is constantly tempted to push his own measures to an extreme because he suspects his competitor is doing the same thing and has no means of knowing what the actual facts are.

#### THE FILING AND PUBLICATION OF TARIFFS.

The provisions of section 6 of the Act, which require that all local and joint interstate tariffs, classifications and rate sheets be filed in the office of the Commission, have been enforced from the outset, and they have been found of the utmost value. It is difficult to see how any proper understanding of the traffic arrangements in use could otherwise have been had; it enables the Commission to keep abreast of all changes and to exercise, to some extent at least, the supervision authorized by the twelfth section of the Act. The documents received, varying in size from single sheets to large volumes, are delivered to the officer in charge of the subject of Rates and Transportation, where they are receipted for; a general examination of their contents is made, and they are then distributed in file cases appropriated to the different transportation lines, indexes being kept so far as necessary. The system employed makes it possible for the Commission to ascertain at any time and with very little difficulty the legal rate in force for the transportation of passengers or of any article of freight between any points throughout the land.

The organization of this division embraces an auditor, an assistant auditor, a stenographer, ten clerks and a messenger. One thousand and twenty-one separate files are kept, among which all schedules and documents relating to rates are distributed as rapidly as received. The receipt of about 500 tariffs is acknowledged daily, making about 160,000 per year. The total number received since the organization of the Commission is about 270,000.

In addition to this, contracts, agreements and traffic arrangements are also required to be filed with the Commission, and are arranged and indexed in a way to permit of their immediate production and examination at any time.

Much still remains to be done in order to assure a complete and adequate supervision of the transportation schedules furnished by the carriers. No uniformity in form has yet been reached, nor has any general system been adopted under which they are prepared. Amendments to the Act, now pending in Congress, are designed to enable the Commission to enforce the adoption of better and more systematic methods, which are greatly needed, as well as to secure more complete publication of such schedules as are required to be kept for public inspection in every depot or station upon every road.

Certain circulars and orders issued to carriers in relation to the filing of tariffs and similar subjects are contained in Appendix D. The same appendix also contains the Rules of Practice in cases and proceedings before the Commission, together with a statement showing in detail the expenditures of the Commission for the period ending June 30, 1888, including the number of persons employed and the amount of compensation to each.

#### THE OPERATION OF THE LAW.

To what extent, if at all, the administration of the Act has been harmful to the carriers is a subject upon which the views of railroad managers have from time to time been publicly expressed, sometimes to the effect that the damage has been very considerable. The Commission is possessed of no evidence showing that the general result has been otherwise

than beneficial. In so far as the Act puts an end to the practices before indulged in, which operated to the public detriment—such as the improper granting of free transportation, the giving of special rates and rebates, and the making of unjust discriminations—the question whether the revenue of the carriers was injuriously affected may well be considered immaterial, since the prohibition was demanded on grounds of common justice and public morality, and ought to have been declared, even though the profit from such practices were unquestionable.

But the Commission believes that such prohibition tended to benefit the revenues of the carriers and not to deplete them. It made all traffic more generally and more evenly remunerative, and at the same time to some extent relieved very much traffic from the weight of burdens which were before relatively unjust. The requirement of notice of a proposed advance in rates was also one of obvious justice, and the Commission does not often hear complaint of it. The loss most frequently brought forward as a subject of complaint is that which results from the rule of the fourth section, which has for its object the doing away with the practice of making the greater charge for the shorter transportation on the same line in the same direction. But as the Act expressly makes exception of cases in which the circumstances and conditions are dissimilar, it is not conceded that the complaints of the Act on this ground are well founded. If the circumstances and conditions of the longer and the shorter haul are substantially similar, the greater charge on the shorter haul can not be just, and the carriers ought not to desire the privilege of making it.

Unquestionably the railroad business of the country has suffered many and very severe losses during the past year. But these have not been due to the Act to regulate commerce. One of the most serious of these came from a strike of engineers on the Chicago, Burlington and Quincy Railroad. This strike was so important, not only to the parties concerned, but to the whole public, that the Commission had intended to make it the subject of investigation for the purpose not only of sifting the facts and of presenting a reliable



history, but also for the purpose of such lessons as the facts might teach. As this became impracticable, it is only necessary here to say that the losses of the railroad company resulting from the strike were simply enormous, while those of the brotherhood, by which the strike was ordered and sustained, were, perhaps, in proportion, equally great. The strike began February 27, 1888, and was for several months a seriously disturbing factor in transportation in the whole region reached by the system of roads aimed at. It was also the cause of some subsidiary or sympathetic strikes, and as the main strike has never been declared at an end, the injurious consequences have perhaps not wholly ceased up to this day.

Serious impairment of net revenue has in several cases resulted from the construction and opening of new lines of road, involving great outlay, and at first producing comparatively little income. In some instances, such new lines have paralleled existing roads which were adequate to handle the existing traffic. In such cases they have not only imposed new burdens upon the systems responsible for their construction, but have resulted in the diminution of receipts upon competing lines.

More serious consequences have resulted from rate wars. During a considerable portion of the year rates have been unsettled in the Northwest, and from time to time the relations between the carriers, always sharply competitive, have resulted in destructive warfare. This can not, however, with any justice or to any extent be claimed to have resulted from the Act, or from its administration. In so far as the Commission has had occasion to deal with questions at issue in that section of the country the effect of its decisions has been towards an improvement in the relations between the carriers instead of towards the originating or intensifying of controversies.

The same may be said of the serious contention in respect to rates, which, at the time of the preparation of this report, is in progress between the trunk line roads. As is commonly the case in rate wars, the existing difficulties had their origin in suspicions on the part of the carriers respectively that

their competitors were not observing the open public rates, and the reductions were made professedly for the purpose of recovering the proportions of freight which those entering into it claimed was their due, but which they were not getting because of the secret or unlawful practices of others.

Efforts of the Commission to obtain from the parties evidence of the practices they suspected have been wholly ineffectual, and the war of rates has proceeded without the possibility of any external authority interposing effectually to bring it to an end.

The legal right of the carriers to reduce their general scale of rates to any extent under the law as it now stands is believed to be unquestionable; they have proceeded to do so to a destructive extent, and whether with any ultimate benefit to themselves is at least very questionable.

What should be distinctly understood in the matter is that the immediate losses in such cases are not in any proper sense due to the Act to regulate commerce. They are, on the other hand, due to violations of the Act; and if those engaged in reducing rates because of supposed improper practices by their competitors were able and were disposed to produce evidence of the practices the existence of which they charge, the enforcement of the law based upon such evidence would tend to the common benefit of all concerned.

#### RATES UNREASONABLY LOW.

In one case which came before the Commission within the year, complaint was made of certain rates made by a railroad company as being unreasonably and destructively low. The carrier making them was competitor to several others for the freight passing between large cities several hundred miles apart, and the others averred that if compelled to meet these rates, and to continue them, they would in time be forced into bankruptcy. The only alternative would be the putting up the rates to intermediate points so as to make the greater charges on the shorter hauls; and this the law would not permit. Under such circumstances the very low rates which were complained of were alleged to be neither just nor reasonable, and therefore it was claimed they were forbidden

under the Act to regulate commerce, and the Commission was asked to so decide. At the same time evidence was given which it was claimed tended to show that the carrier making the obnoxious rates was not obtaining from its business a revenue adequate to its necessities; but whether the evidence was convincing the Commission did not have occasion to say.

If it is important to the public that a railroad once constructed should be maintained, the ability to make charges that will render its maintenance possible is also of public importance. When, therefore, the rate sheets are such that reasonable returns are not probable, a public injury is threatened, and the injury is accomplished when the natural result of bankruptcy is realized. It is of little moment that in the meantime the public reap an apparent benefit from the very low rates; the apparent benefit is almost always illusory, for the unremunerative rate sheets are seldom evenly balanced; they favor particular towns or particular interests, or they go spasmodically up and down, and thus unsettle prices; they are commonly made quite as much to injure competitors as to benefit the party making them, and it will generally be found that reasonable rates adjusted equitably over the whole field of service would have been as much better to the community as to the carrier itself. This, however, may not at the time be apparent; the public perceives what seems to be a benefit from low rates, and the attendant evils, which are not so obvious, may possibly not be perceived at all.

The fact which the public mind does not readily grasp in such cases is that the very low rates may be made by the carrier with full knowledge that they are not remunerative. Even in the plainest cases the truth is not always generally accepted; the rates are very properly taken as *prima facie* evidence of their adequacy, and to the public the evidence seems conclusive. And why should it not when the only legitimate business purpose in building railroads and operating them afterwards is to make money thereby?

Unfortunately the purpose to make money from railroads is not a purpose in every case to make money by legitimate operation.

A railroad may be built by those who calculate to make their profit out of the building and who expect the road, when built and paid for in money or available securities, to pass into the hands of others with whose profits or losses the constructors will have no concern. It is unquestionable that many roads have been built for which there was no legitimate demand at all adequate to their cost. The promoters may clearly perceive this and yet contemplate a profit to themselves; but the profit must then be looked for in the transfer of inevitable losses to the shoulders of others. If this is not accomplished before the road is put in operation, the most feasible method of accomplishing it afterwards may be to make the road as injurious as possible to other roads, until some party having a valuable property to protect will take the obnoxious road in order to stop its destructive operations. Before the road is disposed of it is made use of with some such purpose in view; its rates are devised not in the expectation that legitimate revenue for its needs will be realized, but that competitors may feel its power to do mischief.

The public does not, therefore, misjudge when it assumes that the object the promoters have in view in building the road is to make money thereby, but it is altogether astray as to the particular means whereby the object is expected to be accomplished. Many very costly roads have been built from which the builders have realized large fortunes, but which, nevertheless, in the hands of stockholders are worthless as a source of profit. The contractors may have obtained their pay, but the foreclosure of mortgages given to secure the debt for construction has cut off the original stock, and eventually they become mere adjuncts to other roads which they might otherwise injure; as the New York, West Shore and Buffalo has become an adjunct to the New York Central, and the New York, Chicago and St. Louis to the Lake Shore.

In estimating the public benefit from a road thus built it is necessary to begin by charging to the debit side the capital sunk in it and the damage, if any, which it has inflicted upon other roads. The benefits may be considerable. Every road supplies some local communities which would otherwise be

without railroad facilities and gives to other points the benefits of competition, but the debit side is likely to be greatest until the time comes when, if it had not been sooner built the gradual increase in population and business would have created a demand for it. But so soon as the management has a legitimate revenue in view its rates must be so graded as to produce it, and they are very likely to be then made higher than would have been necessary had the road been demanded by business needs at the time of construction.

A road built in good faith and in the expectation of legitimate profits from its business is susceptible of being afterwards used for stock-jobbing purposes, and when it is so used its rates, instead of being calculated with a view to the permanent interest of the road, may be arranged with a view to make the results operate most effectually for the time being upon the judgments or the imaginations of the stock board. To this end the interest of stockholders may be sacrificed just as remorselessly as the interest of rival roads or of the general public. Roads from which no fairly-earned dividend could reasonably be expected have thus for many years been made the subject of stock speculation, and the manipulation of rates to that end has been productive of infinite mischief.

The chief evil has not been that the public has been misled as to what are reasonable rates, but the stock speculators controlling the roads have stood before the public eye as representatives of the whole class of railroad managers, and the devious ways of a few have been looked upon as characteristic of all. Declaring a dividend which has not been earned is among the devices to which persons who are at once managers of roads and stock jobbers resort. The persons likely to be most seriously wronged in such a case are those who are deceived into buying the stock for more than its value; and they are doubly wronged; first in the purchase, and afterwards in the road being charged with the burden of making up from subsequent earnings what has improperly been taken from the company's treasury. But every stockholder not a party to the transaction and cognizant of the facts is wronged, with the sole exception of those who receive the dividend and who also dispose of their stock.

In all business corporations the stockholders are changing continually. By the rules of common right and justice the stockholders who are such at the usual time for deciding upon dividends are entitled to what has been earned during the period which the decision upon the question of dividends will cover, and they are entitled to no more. To pay a dividend not earned is to give money to some who have no just claim to it, taking it directly or indirectly from the property of others. But even if there were to be no change in stockholders, the very parties who received the unearned dividend would be wronged, since the power of the road to earn dividends in the future would almost necessarily be diminished. No effectual means of prevention has yet been suggested other than legislation to make such acts criminal, or the establishment of some public supervision of accounts and the sanction of the dividend by some public authority.

The reports which interstate carriers are required to make to the Commission may have a conservative influence, since they will increase the difficulty of making a show of profits when profits have not been realized, but accounts are easily manipulated so as to be made to tell deceptive tales, and nothing but an investigation that goes back of the report to the original accounts will enable the deception to be uncovered. But in existing legislation we find nothing which seems to contemplate that special investigation will be entered upon with no other purpose than to prevent wrongs to the corporation itself or its stockholders.

The cases mentioned are far from being the only ones in which persons having control of railroads may deliberately make insufficient rates in the expectation of profits to be indirectly and improperly derived therefrom. Every case of rate war may be regarded as one of this character. Present profits are sacrificed on a calculation that by crippling a rival or forcing an agreement or compromise on some matter of contention the loss will in time be more than made up. In the great majority of such cases the losses are found in the end to exceed the gains, and the difficulty of getting back to reasonable rates after the war is ended is sometimes very serious. Then there are a great many cases in which very

low rates may be given to build up particular places or interests when corresponding rates could not be made universal. Though rates which are unjustly discriminating are forbidden by law, the line between what is admissible and what is illegal is not so distinct but that serious errors may be and often are committed, perhaps without any definite purpose to disobey the law. In such cases, rates made even through error of judgment too low, are likely to be balanced by others made proportionately too high.

The statute, in its requirement of reasonable and just rates, has had in view the protection of the public from extortion and from unfair discriminations. It does not assume that railroad companies will need protection against their rates being made unreasonably low, and it has not conferred upon the Commission any power to order an increase of rates which it can see are not remunerative. In general, therefore, it may be said that railroad managers possess the power to destroy the interests not only of their rivals, but of their own stockholders, if they will recklessly make rates that lead to bankruptcy.

In some cases, however, the exercise of the authority of the Commission to prevent acts forbidden by the statute may indirectly have a conservative influence in respect to rates. This may be the case when discrimination between localities or between different kinds of business is complained of. A railroad company ever so much inclined to give ruinously low rates to one locality or to one species of traffic, will hesitate to do so when it understands that it will be done at the peril of having its rates to other localities or upon other kinds of traffic cut down proportionally. The liability to have this done is perhaps not as thoroughly understood as it should be. A railroad company can have no right to carry grain or dressed meats at nominal rates, and at the same time maintain highly remunerative rates on other articles of corresponding value, bulk, and ease of carriage. The law can not justify dealing with one species of the traffic by itself and waging a war of rates in respect of it, while at the same time keeping up rates upon other articles.

The tendency of the unreasonably low rates on the one



species of traffic is in the direction of unreasonably high rates on others, and those who are charged the high rates, even though the charges are not at the same time increased, have a right to demand that the burdens of transportation be more equally distributed. A few years since one or more of the trunk lines were carrying immigrants from New York to Chicago for \$1 each. When all commissions are deducted it is doubtful if they are obtaining very much more now. What legal right a carrier can have when making a charge like that to one class of passengers, to charge another \$18 is not very obvious. If the one charge is admissible on business rules, the other must be extortionate. The question whether the larger rate is not reasonable "in and of itself" is not the question which such a case presents. The true question is one of unjust discrimination. And the fact can not be ignored that the losses suffered from the unprofitable traffic must somehow be made up, and all paying traffic may in some degree be assumed to share them.

The importance of steady rates may be shown by placing in juxtaposition expressions of views on the subject made by persons speaking from altogether different standpoints. The president of a leading railroad line, in a recent public utterance, speaks of "the enormous importance of reasonable public and stable rates to the whole business of the country. Credit and prosperity in every business are dependent upon the credit of railroad securities, and those securities have now reached such an enormous volume that they furnish the real basis of our whole financial structure." A business man of Kansas City, not connected with railroads, and desirous of bringing them under further control, writes to the Commission:

The frequent and violent changes in railway rates which have taken place during the past few years, and which seem likely to be unabated, seem to me to call for new legislation in the way of amendment of the interstate commerce bill. These changes are ruinous to all business men, as well as the railways, and are the cause of great discontent among shippers everywhere, and especially to the farmers. What is needed is a fixed permanent rate, which shall be reasonable, and which can be counted upon by any one engaging in business.

Such views are being continually expressed, and they well illustrate the opinions which prevail generally in business circles.

Steadiness of rates, then, is an object to be kept in view in the public interest. In a recent passenger-rate war between roads extending east from St. Louis joint rates were in some instances reduced several times in the course of a single day, until they were made absurdly low, the reduction being sometimes made without even waiting for the consent of connecting roads, so that parties who had purchased tickets would have found them not honored before they reached their destinations, and been subjected to great annoyance before redress could be obtained had the connecting roads declined, as they might have done, to accept the tickets and share the losses. When the general passenger agents had sufficiently subdued their belligerent mood, the rates were suddenly advanced, with the inevitable result that parties who had calculated on the low rates and been enticed from their homes or seduced into taking any action in reliance upon them, found themselves compelled to pay more than they had reason to expect; they doubtless felt something the same sense of being wronged that the people of a neutral territory may be expected to feel when it is overrun by the armies of belligerents.

Very low rates may possibly be injurious to the public interest even when they are relatively just and are steadily maintained. This may be so irrespective of the fact that it is always for the interest of a country that the capital invested in any great and necessary industry should be reasonably remunerative. Independent of any returns to stockholders it is important that rates be remunerative, because of the effect that insufficient revenue may have upon the service performed for the public.

No State, in the exercise of its controlling authority, would ever deliberately prescribe for a railroad company a tariff of charges which would fall below a reasonable compensation for the service performed. Abundant reason for abstaining would be found in the fact that it would not be for the interest of the citizens that it should do so. The people want

good railroad service, and they ought to have it at fair rates; but to give them this it is needful that the road be kept in good condition and well equipped; that the trains be sufficiently manned and well handled; that competent servants be employed and fairly paid, and that the company avail itself of all new appliances which are calculated to make the service more speedy, more convenient, or more safe.

But good service and unreasonably low rates are antagonistic ideas; if the latter are insisted upon the former is not to be expected. Many times in railroad history it has been found on inquiring into the cause of some great railroad calamity that it was due to the fact that some bridge had become weak, some tunnel was insufficiently guarded, some machinery defective, or some employee incompetent or wanting in vigilance because of overwork. If the road was prosperous the management would thus be shown to be inexcusable, perhaps criminal; but if the road was not prosperous, and for some reason the management had been forced to make such rates as would not give the necessary revenue for a safer service, the blame for such a calamity may be fairly subject to apportionment. The public can never be in the wrong in demanding good service when fair rates are conceded, and an enlightened public sentiment will never object to fair rates when it is understood that good service is conditional upon them.

But the public sentiment will never be enlightened as to what are fair rates, and disposed steadily to assent to their maintenance, so long as railroad managers in their absurd and destructive wars are perpetually and in the most emphatic manner, by cutting fair rates, informing the public that something less—perhaps greatly less—can be afforded.

This general subject of reasonable rates is one that addresses itself to shareholders in railroad corporations quite as forcibly as to the official boards or managers. It has been observed in some instances that shareholders have awakened to the fact that their revenues have been seriously injured by disastrous rate-wars, which often originate from trifling causes, but once entered upon and indorsed by the responsible management of the line are persevered in because the

officials are too proud to recede, or feel that they can not afford to assume the responsibility involved in apparent surrender. In other cases the president or directors of corporations have learned to appreciate the danger involved in committing the rate-making power to subordinates whose training and experience have not generally fitted them to deal with matters that involve wide questions of policy, and who being unable to grasp facts or principles outside their range of vision, determine important matters under influences often no higher than the small personal prejudices and rivalries which the business engenders. If boards of direction were frequently to exercise their authority of supervision the influence would no doubt be wholesome, but it would be even more so if stockholders' meetings were to manifest unmistakably their purpose that their interests should not be recklessly and needlessly sacrificed.

A rate-war, under the present law, is a much more serious matter than formerly; but apparently this is a fact only to be learned by severe individual experience. Rates between terminals can not now be lawfully reduced without at the same time requiring large reductions at intermediate points, affecting purely local traffic. A reduction once made must remain operative until the notice required by law for its restoration can be given. Reductions often affect many other points than those at first in contemplation, and rates on many other commodities are drawn into the current. As is said elsewhere, the rates after a short duration are accepted by the public as the measure of future right, and even of comparisons at widely different points. Localities insist upon protection, and all manner of business interests are affected unfavorably. Values of accumulated products are depressed at innumerable points. Cut-rates must be open to the public, and not distributed to individual shippers as before.

In view of these considerations, and others that might be mentioned, the question often becomes of high moment whether, as a broad proposition, it is wiser to meet the reduced rates of a competitor, or to let the business go. Yet the decision of this question is left by important lines in the hands of subordinates who apparently have no other notion

upon the subject beyond the rule that every cut rate must be promptly "met," and who are ready to proceed upon the idea, which is a further inheritance from former systems, that any methods of competition whatsoever which are deemed to yield unfair advantage, are to be assailed and reformed by cutting rates upon traffic generally, or upon such classes thereof as have been the occasion of the unfriendly controversy.

The difficulties of the whole subject are freely admitted, but the manner in which they are now met can not fail to be unqualifiedly condemned. Nothing seems more surprising than the fact that a railroad manager who will neither take steps by law to put a stop to a secret cutting of rates which he publicly charges, nor furnish evidence upon which others may do so, will nevertheless sacrifice for his shareholders millions of revenue to punish it. This is grasping the blade to strike down an adversary with the hilt. The average citizen can hardly fail to see, if the railroad manager does not, that the employment of a weapon which may injure the user even more than the adversary is not wise warfare. Rate cutting is such a weapon.

#### UNITY OF RAILROAD INTERESTS.

One of the chief perplexities encountered in dealing with complaints against railroad companies arises from the fact that to the public mind the railroad interest of the country seems to be in some sense a unity, so that when there is cause for complaint in the system anywhere, the whole interest is chargeable with some degree of moral if not legal responsibility.

In the guarded exercise of the power of Congress to regulate commerce, the authority to regulate it on the railroads of the country as if they were all under the same ownership and had the same charter rights and liabilities has never by any act of legislation been asserted. The several carriers have always been treated and still are treated under the Act to regulate commerce as individual and independent entities, each being responsible on its own behalf but not for others, and no attempt has been made by legislation to impose lia-

bilities or to disturb rights contrary to the provisions of the State charters or State laws.

On the other hand, it is perfectly reasonable to expect that the carriers of the country will, in so far as it is found practicable to do so, make such joint and general arrangements among their number that the public, when availing themselves of their services, shall find an arrangement with one adequate for the purposes of any single transaction. The dealer in the most distant part of the country having occasion to make a consignment from thence to the sea-board, should, if practicable, be enabled to make his arrangement with the local agent for the whole transportation, with the understanding that the initial carrier will then see that the implied obligations which attend the undertaking of carriage are observed throughout. This, unquestionably, is what is required by general public convenience, and this requirement should, as far as possible, be met. For the most part, it may be said to be now met by the leading carriers of the country, when the consignment does not pass off their roads upon side lines which are not under their control. But it is not so universally met by the shorter and weaker lines; nor would it be so easily met by them if the disposition to do so were general.

One difficulty in the way of making such arrangements universal is connected with the necessity of having some means of enforcing among the carriers themselves the obligations, moral or legal, that would grow out of them. If one carrier is to place itself in position to be responsible for what may be done by another, it will be deemed necessary to have some means of promptly indemnifying itself when it is made to respond for the other's nonfeasances or misfeasances. And when it is considered how vast is the number of transactions which every important road must have with others, some of which before they are concluded reach out to distant parts of the country, and may involve liabilities that could not be foreseen, it must be evident that a means of indemnification sufficiently prompt and effectual would hardly be found in the right to bring a suit at law. The strength and even the solvency of a carrier might be impaired by the requirements

of such a responsibility unless it had the means of prompt re-imbursement.

But the voluntary establishment of such extensive responsibility would require such mutual arrangements between the carriers as would establish a common authority which should be vested with power to make traffic arrangements, to fix rates and provide for their steady maintenance, to compel the performance of mutual duties among the members, and to enforce promptly and efficiently such sanctions to their mutual understandings as might be agreed upon. Something faintly resembling this has heretofore been done through the railroad associations, but the only effectual sanction which they have as yet contrived whereby the observance of good faith in their mutual dealings could be enforced was through the device of pooling their freight or earnings. Even this was imperfect, because the arrangement could always be withdrawn from at pleasure, but pooling is now out of their power, being forbidden by law. With pooling prohibited the tendency among the railroads seems likely to be in the direction of consolidation as the only means of effectual protection against mutual jealousies and destructive rate wars. The need of protection would be still greater with greater extension of liability.

But anything equivalent to consolidation of all the roads of the country under a single head, or even those of a considerable section, whether by merger or by the formation of a confederation which should have powers of legal control, or by the creation of what is now technically denominated a trust, could hardly be supposed possible even if the parties were at liberty to form it at pleasure. If the parties could come into harmony on the subject an arrangement of the sort would be so overshadowing, so powerful in its control over the business interests of the country, and so susceptible of being used for mischievous purposes in many ways that the public policy could not for a moment sanction it, at least unless by statute it were held in close legal restraints and under effectual public supervision and control. The voluntary arrangements of the kind in other lines of business are already sufficiently threatening to the public interest, and the



most ardent advocate of the concentration of railroad authority can not reasonably expect that anything of the sort to control the transportation of the country will be provided for by legislation. Without legislation to favor it little can be done beyond the formation of consulting and advisory associations and the work of these is not only necessarily defective, but it is also limited to circumscribed territory.

In the absence of any such concentration of authority the carriers by rail have it in their power to do very much towards establishing better relations with the public at large and towards performing better service for the public by first establishing better relations among themselves. The need of this is very imperative. So long as they are legally independent of each other it is quite possible for each of them to keep strictly within its legal obligations and still, by failing to extend the accommodations within its power, to cause great and needless inconvenience to the public. The obligation to avoid doing this, and, on the other hand, to do the exact opposite, will be obvious to any one who has in mind the purposes for which railroads are constructed.

The first requisite to the establishment of better relations among the carriers by rail would seem to be a recognition on their part of the fact that they seem to the public to constitute a *class*, with, to some extent at least, common interests, and likely to be controlled by the same motives. They offer to the public certain conveniences, and if the offer is accepted they unite as far as may be necessary in complying with it. In the great majority of cases in which the service of more than one is required in a particular transaction the party requiring it comes personally into relations with one only, and however numerous may be those who unite in performing the service, he does not even in thought distinguish the parts performed by each severally, but in his mind he is one party to a transaction to which all the carriers who have served him constitute together the other party. Then, all the carriers of the country seem to be making jointly a like offer of common service to all who will apply for it; they seem to be working together for a common object, and they share between them

the results of such transactions as under their joint offers they may be called on to participate in.

It is not surprising, therefore, that to the public there should seem to be something in the nature of mutual responsibility resting upon the whole class and extending to the conduct of its members severally while engaged in the performance of services in which they thus co-operate. If this comes to be clearly seen and so far appreciated by the carriers as to be made the basis of practical action, we may reasonably hope that many things which are now done, and which are in various ways mischievous, will be abstained from, because it will then be seen how insignificant in general are the benefits, and how great and widespread are the evils that must arise therefrom.

In all cutting of rates the party beginning it makes charges or insinuations against its competitors. The public is either told that the rate which is cut was too high, and then the competitor is charged with intentional extortion, or the competitor is accused of some underhanded or dishonorable conduct which renders the cut necessary in order to teach a lesson or force proper terms for future relations. Cases have been observed of a carrier cutting rates very largely, and proclaiming to the public that the reduced rates were all that could be justly demanded, when at the same time it was apparent to all persons having expert knowledge that persistence in such rates would lead directly to bankruptcy.

In such cases there are ulterior objects in view which the cutting is expected to accomplish, but meantime the public is being misled as to what are just rates, and what is perhaps even more damaging to the carriers, it is being practically told by the parties participating that the members of their class are not deserving of the confidence commonly extended to each other by business men, but may be expected to deal unfairly whenever anything can apparently be gained by doing so. If the cases are not common, they are certainly not unknown, in which the agents of one railroad company make active efforts to poison the minds of the public against the management of another; insinuating against it

wrongs and illegalities which exist only in the imagination or perhaps the invention of the party making the charges, and thus embarrassing the business of the other in every way in which it can be done with impunity.

In so far as conduct of the nature indicated is designed merely to secure business that otherwise would be given to a competitor, it probably does not go beyond the practices to be met with in other employments; but in no other employment could practices of the kind, for the reasons hereinbefore stated, be so harmful to the parties by or upon whom they are practiced. In other employments competition and separate action are facts as prominent before the public eye as co-operation and apparent joint interest are in this; and the public does not charge the parties following them with joint responsibility; but when business methods are abandoned and resort is had to destructive warfare to punish a competitor, or to secure any coveted advantage, the carriers go quite beyond what is common in other employments, which indeed do not offer the opportunity for destructive acts of like nature.

In considering whether there is any reasonable or even plausible excuse for them, we may freely concede all that is said by railroad managers regarding the difficulty of supporting their mutual arrangements in the absence of any power to prescribe an effective sanction for their enforcement. Nevertheless an impartial observer is compelled to say that the methods now so frequently resorted to for the remedy of supposed grievances or for the punishment of supposed wrongs are methods which do not belong to the present age. They correspond to the methods whereby in a barbarous age a rude redress by force is sought for individual injuries. To make the adversary feel and fear the power to inflict injury is often the first and principal thought, and a rate is cut when in a ruder age it would have been a throat. The motive in each case is the same, to obtain a right or extort a privilege or punish a wrong, and the hostile act may be resorted to irrespective of any question whether there are not legal remedies which are adequate for all purposes of substantial justice.

It is a pertinent question in this connection : Who is hurt by this species of private warfare ? The carrier aimed at primarily, perhaps, but the injury never stops there. The attacking party is almost inevitably injured, and the injury may even go to the extent of the destruction of the interests of holders of its stocks or securities. If it stops short of destruction, it may nevertheless impair the capacity of the road for usefulness, and in either event what is done is matter of serious public moment. But the injury goes beyond the belligerents ; it is likely to affect in a direct way many others, while indirectly injuring the whole class.

What beyond this is specially important is, that such action strengthens and perpetuates a feeling of distrust and hostility, which is and for a number of years has been the chief obstacle to the profitable management of railroads. In sections of the country where the antagonism to railroads has been strongest nothing is more evident than that, for their own interest, what is needed above all things is that the management of the roads shall be such as to convince the public that in respect to railroad service it is to have fair treatment and the application of just business principles. But the public is not likely to be convinced of this so long as the carriers in their dealings with each other, as well as in their dealings out to the public, are assuming the opposite to be the case. What a railroad manager says against another is taken as an admission against the whole class, and the whole class must bear the consequences. Like all admissions, too, apparently against the interest of the party making it, it is supposed to express less than the truth.

But the evils arising from the want of friendly business relations between the railroads fall largely upon the public also. This is inevitable so long as each road has an independent existence, and its traffic arrangements with other roads are matters of choice and contract. The difference between performing the legal duty grudgingly, though to the letter of the bond, or on the other hand performing it in an accommodating spirit and with the purpose to make the service as valuable as possible, may in some cases be the difference between a general annoyance and a great public con-

venience. A short road may sometimes make itself little better than a public nuisance by simply abstaining from all accommodation that could not by law be forced from it. It would not be likely to do this unless for some purpose of extortion from other roads, but the existence of the power to annoy and embarrass is a fact of large importance.

The public has an interest in being protected against the probable exercise of any such power. But its interest goes further than this: it goes to the establishment of such relations among the managers of roads as will lead to the extension of their traffic arrangements with mutual responsibility just as far as may be possible, so that the public may have in the service performed all the benefits and conveniences that might be expected to follow from general federation. There is nothing in the existence of such arrangements which is at all inconsistent with earnest competition. They are of general convenience to the carriers, as well as to the public, and their voluntary extension may be looked for until in the strife between the roads the limits of competition are passed and warfare is entered upon. But in order to form them great mutual concessions are often indispensable, and such concessions are likely to be made when relations are friendly, but are not to be looked for when hostile relations have been inaugurated.

It is not uncommon that railroad managers protest with great earnestness that gross injustice is done when all managers are classed together in public censure, so that the one who most scrupulously performs his duty is made to suffer for the misconduct of others. The hardship of such a case is very obvious. Nevertheless in dealing with any subject it is necessary to look the actual condition in the face; to take facts as they are, not as they ought to be. Injustice no doubt results in many cases under existing conditions, and the question demanding practical solution is, how the evils of which the injustice is a consequence may in the future be prevented, or at least be reduced in number and in damaging effect. With this question confronting him; it seems a dictate of obvious prudence that every person occupying a responsible position in railroad service, and who desires so

to perform his duty as to render his service on the one hand profitable to the owners of the road and on the other hand as useful as may be to the public, should have in mind at all times, not merely what his legal obligations are, but also in what light he and all others in the same service are regarded by the public. If they are looked upon as a class having among themselves mutual responsibilities and duties, but charged also as a class with responsibilities to the public, and if this condition of things is so far favored by circumstances that it is likely to continue, he can hardly, as a reasonable man, doubt that he will best subserve the interests he directly represents when in all his action he keeps steadily in view the importance of securing and maintaining, as far as possible, the most friendly relations between the whole class and the general public, and of preventing or removing all causes of annoyance or friction in the performance of public service by any member of the class. To this end it becomes important that while making his own service as valuable as may be, he shall also contribute, so far as proper accommodations may go, to the value of the service rendered to the public by others, even though the others may be competitors and rivals.

The purpose of the act to regulate commerce may be summed up in a single phrase: it is to bring the railroads of the country under the control of law representing an enlightened public opinion. The practical instruction upon which this opinion is to be formed will come largely from the management of the roads. If that management is conspicuously just and accommodating, the opinion based upon it will not only be properly enlightened, but it will be such as to insure to the roads a treatment from the public and from all official authority that will directly tend to the advancement of their best interests.

While the Commission is not at this time prepared to recommend general legislation towards the establishment and promotion of relations between the carriers that shall better subserve the public interest than those which are now common, it must, nevertheless, look forward to the possibility of something of that nature becoming at some time imperative,

unless a great improvement in the existing condition of things is voluntarily inaugurated.

## THE LAW IN ITS EFFECT UPON CITIES.

A leading purpose of the act to regulate commerce was to restrain carriers in the service performed by them for the public from giving preferences, through favoritism or otherwise, whereby those least able to protect themselves, whether persons or localities or interests, would be placed at disadvantage unjustly. This general purpose was conceded to be wise as well as just, but some of the consequences necessarily flowing from the enforcement of provisions to that end were probably not anticipated by some parties who not only favored the law but concurred in the principle of relative equality.

Population under the influence of modern civilization tends to rapid aggregation in cities. This tendency is particularly noticeable in new countries. At first the population is mainly rural and agricultural, but as business becomes diversified and the people by manufactures come to supply their own needs, the convenience of aggregation for the purposes not only of production but for the exchange of commodities becomes manifest, and centers of trade spring up at which all kinds of business, except the purely agricultural, can be more profitably conducted by being brought together. The advantages of these centers are likely to bear some relation to size, and as in animal life the weaker are seen to become the prey of the stronger, so in the industrial and social, the weaker towns if not destroyed as centers of trade, are at least greatly weakened through the superior power which the stronger possess to command the sources of healthy and vigorous commercial action.

The tendency to the increase in urban population has been greatly accelerated by the modern improvements in means of locomotion. Railroads in a certain sense may be said to annihilate time and space. They diminish the need for local markets by rendering the better markets that may be more distant easily and cheaply accessible. Their own largest interests are in the largest towns, and in various ways they favor con-



centration by increasing its advantages and diminishing the considerations that operate against it. The same consequences follow to some extent from improvement in locomotive facilities by other modes. How rapid the tendency has been in our own country may be seen from a comparison of the population of cities at various periods.

When the census of 1790 was taken the population of towns having 8,000 inhabitants or more aggregated but three and three-tenths of the whole population of the country; in 1800 it had increased to three and nine-tenths; in 1810 to four and nine-tenths, at which it remained stationary for a decade; in 1830 it was six and seven-tenths; in 1840, eight and five-tenths; in 1850, twelve and five-tenths; in 1860, sixteen and one-tenth; in 1870, twenty and nine-tenths; in 1880, twenty-two and five-tenths. At the present time one-fourth of all the population of the United States is gathered in towns of 8,000 people and upwards. The increase in percentage is a very striking fact, and if it is to reach a maximum at any time, it has very certainly not reached it as yet.

What was the natural and inevitable tendency has been greatly emphasized by the fact that the carriers of the country, in making up their rate sheets to regulate the charges for the transportation of persons and property, have given to the cities special and very important advantages over the country stations. Some of these advantages have been given to large dealers, found principally in the cities, and given because of the extent of their patronage. But the large towns, as a whole, have been specially favored in rates over the country places, for the reason that the competition was felt mainly at such towns, and under the stress of competition the carriers have felt compelled to make rates which, except upon compulsion, they would not consent to make anywhere.

Pressure of competition has been most severe upon the carriers by rail whose lines touched the great rivers or other navigable waters of the country. Cheaper carriage is possible by water than by land, and a railroad directly competing with a steam-boat line must make low rates or abandon the traffic to the boats. But the exceptionally low rates were by no means restricted to such towns as were possessed of navi-

gable facilities ; the interior cities were also favored, though the competition they enjoyed was exclusively between the carriers by rail. Nor could it always be said that low rates were forced upon the roads by the stress of competition ; they were very often determined by agreement between the carriers controlling the business, and who possessed the same power to exact reasonable rates from the large towns as from the small. Always, however, in the large towns there were influences which were powerful in producing low rates, and the carriers even when they wished to do so did not find it easy to resist them. But very often the interest of a carrier was so far identified with that of a town as to make the giving to it of exceptionally low rates a matter of choice.

While this state of things continued it was almost impossible that in any section of the country possessing already a number of established centers of trade, any smaller town, not yet of sufficient strength to command like favors, should escape a condition of subordination and dependence. Towns must either depend for their growth upon some very special and exceptional natural advantages, or they must have manufactures, or they must contrive to become the centers of a large jobbing trade. But for the success of his business either the merchant or the manufacturer must have the like favorable rates for the transportation of that which he buys and sells as are given to his competitor ; this is indispensable. Any attempt of a small town to grow into rivalry with a large town, beginning with considerable differences in railroad rates against it, must be necessarily unsuccessful.

The specially favorable rates which in one form or another were given to large dealers were not always given as matter of personal favoritism ; perhaps they were quite as often given to enable proprietors to protect their business as against the rivalry of like business located on other roads and supposed to be obtaining similar concessions. Every town thought it must have its leading enterprises protected against the inroads which competitors might make through railroad favors, and there grew up a feeling in the large towns that the trade of the territory which they had customarily supplied belonged to them of right, and that any re-adjustment

of freight rates should not fail to preserve their dominion over it.

It was not at first clearly perceived by every one that the provisions of the act to regulate commerce which prescribed rules of impartial accommodation as between persons, occupations and localities, were really intended to go so far as to place in respect to such accommodations the smallest and most obscure hamlet in the country in the scale of right against the largest and most powerful city, entitling each to the same favorable regard from the carriers which served them. The large towns not unnaturally accepted the provision against discrimination as between localities as one that protected them against their competitors, they did not readily appreciate the fact that it also protected as against them a single patron of the road at a local station, and entitled him to favorable consideration irrespective of any question of competition; that the purpose was that there should be no unreasonable discrimination as between country and city, any more than between large towns.

Indeed, under all the circumstances, the prohibition, so far as it applied to localities, was likely to be specially beneficial to country places; and the prohibition of the greater charge upon the shorter haul on the same line in the same direction, except when the circumstances and conditions were dissimilar, was also calculated to be chiefly beneficial to the smaller towns, since the large towns almost always received such benefit as resulted from the making of the lesser charge. How great the differences were, and how depressing they must necessarily have been upon small towns, some idea may be had from an examination of tariff sheets which showed that a carrier sometimes charged for the transportation of property from one terminus of its line to stations short of the other fully three times as much as it charged by the same tariff sheets for the carriage of like property from the same starting point past the same stations to the other terminus.

It may be assumed that the railroad managers who made these rate-sheets did not in general do so under the influence of any desire to favor the considerable town at the expense of all others, provided they could, with proper regard to the

interests of their roads, establish relatively equal rates as between all stations. When they made rates which thus violated the principles of relative justice, their action was always defended as being a necessary result of the logic of the situation which they would have been glad to escape from had any means of escape been open to them. But whether willingly done, or, on the other hand, done under stress of compulsion by those who would have preferred to do otherwise, the consequences were unmistakable. The small towns bore the heaviest proportionate burdens, and unless on general grounds it was desirable that the cities be specially fostered and favored, the effect must from a social point of view be undesirable for the country. It was impossible that it should be made to seem right to the common mind that such distinctions should exist; the sense of justice received a shock when one was told that the small dealer in the country town was made to pay three times as much for the carriage of his goods as the city merchant paid upon the like quantity, for even a greater distance; and a well-founded feeling of discontent arises among any people when it can see things done under the protection of its laws which seem to be plainly and unmistakably unjust.

It will probably not be claimed by any one that it is desirable to give by law or through the use of public conveniences an artificial stimulus to the building up of cities at the expense of the country. In great cities great social and political evils always concentrate, grow and strengthen, and the larger the cities are the more difficult it is to bring these evils under legal or moral restraints. This fact is so generally recognized that the feeling may be said to be practically universal that the interest of any country is best consulted when public measures and the employment of public conveniences favor the diffusion of population and the profitable employment of industrial energy everywhere, rather than the concentration of population in few localities.

When in consequence of the carriers establishing such rates as the principles of the act to regulate commerce require, some of the towns of the country found that, to some extent, business they had formerly enjoyed was slipping away from

them, their commercial or other business organizations called upon the Commission for protection under circumstances that made their cases present grounds of strong apparent equity. For it was found that while the law which requires rates to be made relatively just and fair was in its application to localities intended specially for the benefit of the small towns which were formerly discriminated against, yet when it came to be given effect it had the result that some one or more large towns in any particular section of the country would apparently receive the principal benefits while other large towns, competitors to it, would to some extent be injured. This result would follow from the fact that the making of more favorable rates to small towns would enable them to have a choice of markets not possessed before, and perhaps invite them to pass by one trading town which had formerly monopolized their trade to a more distant and larger town where the opportunity for choice in buying and to obtain customers in selling would be greater. Whenever this was the case the larger market seemed to be reaping the principal benefit of the favorable rates to the smaller towns; and the complaint was then made by the towns which suffered from the loss of business, that the rates instead of operating justly, discriminated unfairly in favor of the larger town to the prejudice of those which had the right to compete with it.

The first complaint presenting this view was made by merchants of Danville, Va., who claimed that the rates of the Richmond and Danville Railroad Company discriminated against their town and in favor of Richmond. The rates, as expressed on the rate-sheets, did not appear to be unequal or unfair; they seemed to be made with due regard to relative distances, but they allowed no controlling force to the fact that Danville was an important center of trade for a considerable surrounding country, and were so made as to be as favorable to the small stations on the line of the road as they were to the cities. The consequence was that a merchant in a small town on the far side of Danville from Richmond, desiring to secure supplies which Danville merchants were accustomed to procure from Richmond and then re-sell along the line of the road, found himself able, instead of purchas-

ing in Danville, to buy in Richmond, and by shipping the goods to his place of business direct and without unloading at the intermediate city to put them in stock at less cost for transportation than he could have procured them for had they been first sent to Danville and then to the final destination as a second shipment. He would also, by thus dealing, save the profits which the dealer in Danville had formerly received from his business.

It was inevitable that this advantage should, to some extent, be availed of, and the consequent loss of business to Danville was thought by the complaining party to amount to demonstration that the rates which occasioned the loss gave to Richmond an unfair advantage. The proper remedy was supposed to be for the Commission to hold that the aggregate rates from Richmond to Danville and from thence to the final destination should not exceed the rate which was made from Richmond to the same point as a through rate. No other rule, it was said, could possibly operate with justice.

A similar claim was afterwards advanced on behalf of a commercial organization in Omaha, which claimed protection against rates which operated prejudicially to the dealers in their city, and in favor of dealers in Chicago. The same idea has been at the basis of complaints made on behalf of dealers in Detroit and in other localities; but in every case it was apparent that the rates complained of were rates intended to be made in conformity to the spirit of the act, and without any purpose of benefiting or injuring other towns than those to which they were given. And it might also be seen that these peculiar incidental benefits could not be monopolized by a few commercial centers, nor could any one of them gather benefits without reaping losses also. If the dealers in small towns beyond Omaha are now enabled to pass by that city and make purchases in Chicago, which they were accustomed to make in Omaha, so they may pass by Chicago, also, and make them, perhaps, to like advantage in Philadelphia, New York, or Boston. They can now reach out in all directions as they could not before, and even for family supplies there may be a choice of markets, which formerly was not available.

Such a state of facts as was shown in the instances mentioned does not present a case calling for the protection of commercial centers as against each other; what should be done obviously is, to leave just and equal rates to have their natural effect under the influence of legitimate competition. The law can not be blamed for incidental consequences when its rules are just and justly applied. It could not be denied that the rates given to the smaller towns in the cases mentioned were just to them, and the large towns could not, with any propriety, demand that, for their own benefit, rates unjust to the smaller towns should be imposed. All they could claim was that rates should be relatively just when all stations were considered. The carriers could not go further in aid of the competition of cities than to make them so.

In some cases in which it was complained that excessive rates were charged, the evidence offered to make out the excess consisted largely in showing that the rates formerly paid, after deducting the rebates which were allowed, were much below the rates now exacted. Evidence to this effect would come almost exclusively from large dealers, and it did not usually show that the public in general at the same locality had formerly been given more favorable rates than they now had. But the evidence was incomplete for the purpose designed because it did not take a comprehensive view of the whole field, but was confined to a single place. Proof that a railroad company is now on an average when all its stations are considered, charging higher rates than formerly; may be taken as a strong *prima facie* showing that present rates are excessive; but their being higher at a single locality may be a result of an equalization of rates as between localities, which necessarily advances those which formerly were proportionally too low, and reduces in like degree those which formerly were proportionally too high. If the rates are now found to be made on correct principles, and are relatively fair as between localities, it can not be a just ground for complaint that some town which formerly was greatly and unjustly favored, finds its rates advanced. Not unlikely it may turn out on investigation into the circumstances of such a case that the advance



was necessary to enable a carrier to make the proper concessions to other localities.

To what is above said regarding the effect upon large towns of a strict enforcement of the long and short haul clause of the Act, a partial exception must be made of towns and cities upon the trans-continental lines. All the interior towns, large and small, will receive benefits therefrom; the incidental injurious effects will fall mainly upon the terminal cities.

## UNIFORM CLASSIFICATION.

In the first annual report of the Commission attention was called to the fact that rates for railroad transportation are to some extent adjusted on principles analogous to those on which taxes are laid; the articles or the interests that can least afford to bear such burdens are given the benefit of low rates which the carriers can not afford to give to all, and higher proportional rates are levied upon the articles and interests which would feel the burden less. This method of adjusting rates has been and is of very high value to the country; indeed it may be said to be indispensable.

The business of a railroad company as a carrier of freight is to exchange for the people the products of different sections and countries, and this exchange, as to many commodities in a country so large as ours, or indeed in any considerable country, would be restricted to comparatively small sections if articles which are at once bulky and cheap and articles which in small compass comprise very great value were alike charged rates for transportation which disregarded the value as an element of estimation, or took it into account only so far as reasonable insurance against loss or injury might render prudent. Railroad managers very soon discovered that they could not measure their rates exclusively by the standard of cost of carriage of the several kinds of traffic, separately considered; but it was wise for themselves and best for the country that the cost of carriage be considered in the aggregate and that the rates which are to be the compensation for the service performed be then apportioned on special consideration of the value of the service to the

kinds of traffic severally. Such an apportionment would seldom be burdensome to articles of high value, but it would relieve cheaper articles from burdens which, if apportioned strictly to the cost to the carriers of their transportation, would render carriage for considerable distances out of the question.

But a practice based upon any such general principle will almost inevitably in its application be subject to many exceptions. Every railroad serves a certain territory, and every part of the country has to some extent interests to be served which are special and peculiar to it, and these it will naturally desire to have specially considered by local, official and corporate authorities, whether the business in hand be the imposition of taxes or the adjustment of rates for transportation, and as many other circumstances besides cost of transportation and value must always be taken into account, such as bulk or weight of articles, convenience of handling, special liability to injury and necessity for speedy delivery, and the field of production or of consumption, so that there can never be any fixed or definite rule for the measurement of the charge to be made upon any particular traffic, it is always possible for the railroad manager in making rates to yield something to the special interests of his section, and still keep in view the general principles upon which he will professedly act.

As rates are apportioned by means of classification of articles which are expected to be offered for carriage, a pressure from sectional and local interests has been continuously brought to bear upon the authorities making the classifications to have them so made that those interests may be favored which the roads to use the classification will more particularly serve. For the most part the classifications have been made by the carriers themselves; in a few instances they have been made by State Commissions, but under influences corresponding to those which have influenced the carriers in the same work. The carriers, it may be assumed, have primarily consulted their own interests, but they have also at the same time consulted the local feeling and the local interests, and have commonly found that their own interests were best subserved in doing so.

The consequence has been that a great number of classifications have been in force in different parts of the country, some of them covering large and some small sections, some made for several but more made for single roads. In very many cases there were two or more classifications in force on a road; one for the traffic in one direction, another for that in the other, a third, perhaps, for the traffic coming from or going to a particular section of the country, and so on. The existence of so many was a great public evil, and it necessarily resulted in constant embarrassment in the interchange of traffic between the roads. The owners of the freights were more annoyed than the carriers themselves, for they were perpetually subject to the liability to be called upon to pay charges for transportation which were greatly in excess of any which they had anticipated. Unexpected charges were likely to breed controversies and cause delays in transportation and delivery, and in the minds of those unfamiliar with the subject of classification there were often suspicions, based on appearances which afforded color for them, that the carriers were guilty of intentional wrong and unjustifiable exactions.

The first important step in the direction of reform was taken by what are known as the trunk line roads, and resulted in an agreement upon what was designated by them the official classification, which was put in force contemporaneously with the taking effect of the Act to regulate commerce. The condition of things in the territory of the trunk lines and the effect of the action taken have been thus stated in proceedings before the Commission:

At the date of the passage of the Act under which this Commission was organized, one hundred and thirty-one railroad companies within the territory roughly defined by a line drawn from Chicago to Saint Louis, including both those cities, and taking in the territory east of the Mississippi and north of the Ohio and Potomac rivers, and including all the New England States, each had, or largely had, a separate classification. In addition to these classifications that grew up out of local conditions, and were thought to be accommodating to the particular roads and shippers, there were also five confederations of railroad companies having each its classification. The present classification has taken the place of the following, which were formerly in use:

*First.*—The local classification of each railroad company.

*Second.*—The through west-bound classification, generally known as the trunk-line west-bound classification, upon the through traffic originating at sea-board cities or points east of the western termini of the trunk lines, and destined to their western termini—Buffalo, Erie, Pittsburgh, Parkersburgh, etc.—and to a number of competitive points, trade centers, or railroad junctions beyond.

*Third.*—The east-bound classification, which alone applied to east-bound traffic originating in the territory east of Chicago and the Mississippi River, west of the western termini of the trunk lines, and north of the Ohio River, on traffic destined to the western termini of the trunk lines and points east thereof.

*Fourth.*—Traffic between competitive interior points in the Middle States (New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, and West Virginia), interchanged between the several trunk lines and connecting roads, was governed by the joint merchandise freight classification, which also applied to the local traffic of certain roads.

*Fifth.*—The Middle and Western States classification applied to traffic between competitive interior points west of the western termini of the trunk lines, east of the Mississippi River and north of the Ohio River.

*Sixth.*—Traffic between certain points in the Western States east of the Mississippi River and certain southern competitive points was governed by the east and south-bound classification.

The present classification takes the place of all these widely different classifications as well as the many local classifications which were more or less in conflict with each other; if they had been continued it would have been impossible to carry out either the letter or spirit of the interstate commerce law.

The conditions and requirements under which the present classification is based are therefore of an entirely different character to those upon which the trunk line west-bound classification from New York was based prior to April 1, 1887. That was confined to one kind of traffic in one direction, destined to comparatively few competitive points west of the western termini of the trunk lines, while the present classification applies to all the traffic in every direction between all stations of the roads, both local and through. The companies using the present classification operate about 47,000 miles of railway, more than one-third of the entire railway mileage of the United States, and over these roads are transported 232,000,000 tons, or about 50 per cent. of the total tonnage carried over the railroads in the United States.

These railroad companies embraced within the territory referred to, desiring to accommodate the traffic passing over these lines to their understanding of the legislation, met together, the principal roads being repre-

sented at this meeting, and on February 18, 1887, a committee was appointed to recommend a uniform classification in place of the then existing ones. This committee consisted of representatives of Eastern and Western roads familiar with the requirements of each section of the country and the different interests involved. The committee finished its labors March 1, 1887, and submitted the result thereof to the Eastern and Western roads at a meeting held in New York, and with some modifications and amendments the report of the committee was adopted, and put into effect on April 1, 1887, which resulted in the making of the common joint classification which first went into effect (Official Classification No. 1).

The former condition of things is further shown in an interesting extract from a letter written to the Commission by the chairman of a railroad freight association, which is given in Appendix E, containing several papers and documents relating to the general subject of classification.

The Official classification was not at first entirely satisfactory to the parties agreeing upon it, and it has from time to time been somewhat changed, but not radically. It did not, however, entirely displace all others, but many roads which adopted it made use also of others to some extent, and still do so. A list of the roads which have adopted and are now using it is also given in Appendix E, with figures indicating that some of them use others also. The whole number of roads using it appears to be 131, of which 87 use it exclusively, 35 use one other, and 9 use two others.

This action of the trunk line roads is very far from being all that has been recently taken in the direction of uniformity in classification. There has been steady and constant movement in that direction, the most important of which has been the enlargement of the territory of the Western classification. The roads making use of that classification had been steadily increasing, and on June 11, 1888, were sixty-nine in number. Since that date the roads forming the Texas Association have adopted the same classification; the trans-continental lines also employ it. The result is, that practically all the railways operating west of a line drawn from New Orleans through Chicago, following Lake Michigan and the connecting waters to Marquette, are using one uniform classification,

except that locally in some of the States railway commissions have adopted a classification of their own making.

The principal classifications now in force are the Official, the Western, and the Southern Railway and Steamship Association classifications. The territory embraced by them severally may be roughly indicated as follows: The first, the territory east of Chicago and north of the Ohio River; the second, the territory west, north and southwest from Chicago, and the third, the territory south of the Ohio and east of the Mississippi. It must be understood, however, that neither of them is exclusively made use of in the territory indicated. Commodity rates are given to a considerable extent in Pacific coast territory, especially upon through trans-continental business, and individual roads in all sections use classifications of their own when circumstances seem to require it.

Efforts in the direction of uniformity have continuously been made during the last year. The most important of these was through a conference of representatives of roads east and west of Chicago, whose sessions began in September, 1887, and extended to July 20, 1888. This conference it was hoped might result in merging the Official and Western classifications. That result was not accomplished, for reasons stated in a report adopted by the conference, and which is given in Appendix E. But unification on a larger scale is still kept in view, and a meeting has now been called by representatives of the existing classifications, to be held at Chicago in the present month, under which it may be assumed the subject will be taken up under auspices more favorable than ever before. The call, with other valuable information on the subject, is appended.

It has seemed to many persons that to unify classifications must be a very simple task. What is classification, it may be asked, but the arrangement of the several articles of commerce under different heads, as pupils in a school may be arranged in classes for recitations, or as a farmer may send his stock for pasturage to different fields? But those most familiar with the subject of classification will be least inclined to look upon the making of a uniform classification as a very simple affair. It is very far from being a simple affair. It

is, on the contrary, as difficult a task as under the ordinary operations of government is likely to be devolved on any person or any body of men. In its nature it corresponds closely to the making of the customs tariff of the country, but the necessity for going into particulars may be greater, for classification must reach every article of ordinary commerce, and it must be framed on the understanding that for every one some burden is to be provided, though among them all there may be apportionment of burdens on some principle adjusted to the general good. And when it is understood that the classifications now in force have come into existence, to a very large extent, as an outgrowth of local and sectional feelings and interests, it will readily be perceived that the difficulty in prescribing uniformity is very much greater than it would be if the work could be taken up now unembarrassed by what has heretofore been done, and by the adjustment of business interests to classifications now in force. In fact, the difficulties are now so great that many intelligent persons in railroad service do not believe satisfactory unification is now possible. This is not, however, a universal belief; many practical railroad men hold a different view, and are now working to that end.

The Commission believes that all action taken on the subject should lead towards uniformity, but that to force it at once would be undesirable. In all consideration of the subject it must be borne in mind that the carriers are not the parties whom unification would most affect. Some carriers might gain and some perhaps at first lose thereby, but the most of them would be able so to adjust their rates that the losses would be inconsiderable, and would also be temporary. But the business interests of the country would have no similar power of self-protection. Unifying the classification means necessarily the placing of the same article in the same class for the purposes of rating in all sections of the country, with the effect as to some of them lowering the rates greatly in some sections while advancing them in perhaps the like proportion in others, so that in the same business, while one dealer might be greatly benefited, another might be ruined. And what would affect injuriously a single dealer would in



like manner affect all in the same line of business in the same section of country and in some degree the country at large as well.

The carriers could not possibly protect against such a consequence; for while the rates would not necessarily be the same in different sections, the rates which any road imposed on one class would be identical, so that the power to adjust transportation charges with a view to local or sectional interests which now exists and is supposed to be of value would be taken away. And the relative change which would be effected in making uniform classification operative as to any particular business would be far more injurious, because of its affecting individuals and sections differently, than would any absolute increase in rates which affected alike and to the same extent all the traffic subjected to it.

The very first step to be taken by any one who should attempt uniform classification would be to make a study of the reasons from which the existing classifications have sprung. This study would need to be made in the territory which the classification covers. All existing classifications have resulted from many compromises. Pacific coast and Texas interests have compromised with those of the interior in the recent extension of the Western classification, and they would probably be forced to compromise further if the Official and the Western classifications were merged. But no one intrusted with the task of merging them would be excusable for making the attempt without better information to act upon than could be obtainable from a few witnesses summoned to Washington to give it.

Even in the territory whose interests may be supposed to be homogenous, the Commission has encountered serious and earnest antagonism when classification was in question. One of the chief impediments to the merging of the Official and the Western classifications has had regard to car-load classes. The carriers east of Chicago and their patrons desire that there shall be very few; the carriers west of Chicago and their patrons very generally think it for their interest that there shall be a considerably greater number. The feeling on the subject was very well illustrated at a session held

by the Commission in one of the Western States last year. Eastern merchants were moving to have car-load classification materially restricted. Several State Commissions by concerted arrangement came to the meeting to express their strong and very earnest opposition. It was their belief that the measure proposed, if it should be adopted, would be greatly injurious to the interests of the States they represented.

Without any previous knowledge on the subject an opposition of the sort could hardly have been anticipated, but such facts can not fail to impress the mind that to the proper performance of unification it is indispensable that a somewhat extensive knowledge be first acquired not only of local interests, but also of the relation of those interests of similar nature elsewhere. Nobody can acquire this knowledge from the public press, or from the reports of a few persons, however intelligent, who may be summoned to give information. He will need to feel the pulse, so to speak, of the several sections of the country, to make himself acquainted with their various interests, so that he may be able to judge how far any changes will affect them severally. In studying the effect he will be very sure to find that even locally the interests of the farmer, the manufacturer, the jobber and the retail dealer are not identical, and that what would benefit one might harm the other.

The final adjustment of a uniform classification must necessarily be the arrangement of a great number of compromises. It may happen, therefore, that those who are now most earnest in desiring one will be most opposed to any that can be agreed upon. The Commission has received letters on the subject from intelligent business men, but who having never investigated it, are evidently in error as to what can be expected as a result of what they ask for. Some of the writers appear to think that unification will be little more than extending the classification of their section, with which they are familiar, to the whole country, and will be surprised to learn that it can not be made without adopting features from other classifications which their sections have always objected to. But others desire uniform classification

because they expect by means of it to get rid of the principle of considering the value of the service in making rates, and to have the cost of the service to the carrier made the measure of charge, or to have some other practice done away with that does not in its application work to their advantage. A manufacturer of doors and blinds, perhaps, looks to have his product classified with undressed lumber, and the manufacturer of patent medicines, who knows that his boxes can be carried as cheaply as the boxes containing merchandise selling for one-tenth or one-twentieth the sum, expects them to be so classified that they will be rated accordingly. But to any one familiar with the subject the impossibility of meeting such views will be obvious; it would not be for the general public interest that they should be met. This statement sufficiently suggests not the probability merely but the certainty that uniform classification will result in many disappointments.

The reasons above given are reasons for approaching uniform classification with some caution. There are other reasons for urging the carriers in the direction of unification, and not taking it out of their hands so long as they seem to be moving in that direction in good faith and with reasonable diligence. They have knowledge of the local interests which are represented in existing classifications, and their practical experience gives them special fitness for the task. Moreover, this course will have the further advantage that if complaints are made of the classifications the Commission will come to their consideration with minds unembarrassed and uncommitted by previous action of their own.

But it should be further understood that a uniform classification once made can not immediately be put into effect. Considerable time to prepare for it is absolutely essential.

First, it should be stated that the putting it into effect involves the sweeping out of existence of every rate sheet in the country and the making of new rate sheets by every railroad company. This requires an enormous expenditure in printing, which of course must in some manner be made up from the rates imposed. But the cost of preparing the rate

sheets would be vastly greater than this. To determine what the rates ought to be on the several classes would be a labor of infinite difficulty.

Suppose a railroad manager, with the new classification put into his hands, were to address himself to the task of determining what rates he ought now to charge in order that his company may collect the same revenue it has been accustomed to receive. First, he will perceive that the class rates should not be the same as formerly; the number of classes is probably different, but whether different or not, the position of articles in the classes is so different that the imposition of the same rates as formerly may either increase the revenue very greatly or may largely diminish it. In order to determine how this is likely to be it would be necessary to make careful study of the classification in the light of the past and probable future traffic of the road; not the traffic in bulk, but the traffic in each particular article, bringing together for further study the aggregate of articles now ranged in one class, and so going through with the classes successively. And when it is remembered that at the conclusion of his task very many of the patrons of the road will find their rates increased—on some perhaps largely increased—and that very many complaints are to be expected under any circumstances, the importance of avoiding the giving of just grounds for complaint will be so obvious and so great as to demand special care in that direction. All these are reasons rendering it almost imperative that considerable time be allowed for the making of this adjustment of rates after the classification shall have been completed.

But, second, the allowance of time for the adjustment is even less important to the rate maker than to the patrons of the road. If the rate maker errs in making the rates under such circumstances, the error is likely to be one which favors his road at the expense of its patrons; and when that is the case, though it may be corrected after some delay, business interests, which under any circumstances would suffer somewhat in the change, must then, for a time, be exposed to injury that with greater care and more deliberation might have been avoided. But any sudden change in railroad rates

means a like change in values. A prospective change, publicly notified, the business man may prepare for with perhaps little or no injury to his business, but those whom a sudden change affects have no means of warding off injurious consequences.

The Commission sums up its conclusions on this subject by saying:

(1) Uniformity in classification, as fast and as far as it can be accomplished without serious mischiefs, is desirable.

(2) There is gratifying progress in the direction of unification, and it has been very marked within the last year.

(3) So long as the carriers appear to be laboring towards unification with reasonable diligence and in good faith, it is better that they should be encouraged and stimulated to continue their efforts than that the work should be taken out of their hands.

(4) In view of the mischiefs that would flow from sudden changes, ample time should be given for the purpose. Uniform classification can only be wisely and safely made by careful study and deliberate action, and the adjustment of rates to it needs corresponding caution and deliberation.

#### IMMIGRANT TRANSPORTATION.

The transportation of immigrants from the Atlantic seaboard cities, where they land on our shores, to various interior and Pacific slope points, is a branch of the jurisdiction of Congress over interstate commerce covered by the Act creating this Commission, which seems to be worthy of attention.

The number of immigrants that annually arrive and are transported over our various railroad lines is so large, the competition of the different lines for the business of carrying them is so eager, the impositions upon the immigrants by various persons seeking to make a profit out of them are so numerous, and the demoralization in the railroad rates by

payment of commissions, rate-cutting, and otherwise, is so constant, that some better regulations for receiving immigrants upon landing from vessels, and in procuring transportation to their destinations, would seem to be reasonable and fairly warranted.

It is not understood whether the same conditions exist at all the sea-board cities where immigrants arrive. The conditions that call for improvement are most apparent at the port of New York, where much the greater number of immigrants arrive. The Commission has on two occasions within the past year made investigations into the methods of conducting the immigrant business at that port.

The magnitude of the business is shown by the statistics for the year ending June 30, 1888. The whole number of arrivals at the four principal sea-board cities during that time was 533,918, of which the arrivals at Boston were 44,873, at New York 418,423, at Philadelphia 37,325, and at Baltimore 33,297. Of this number the proportion of children under fifteen years of age was at Boston and New York each about one-sixth, at Philadelphia about one-fourth, and at Baltimore a little over one-tenth. The whole number carried westward over the roads known as the trunk lines during that period was 180,642, of which the number carried from Boston was 8,542, from New York 130,547, from Philadelphia 20,648, and from Baltimore 20,904. The destinations of those so carried were to all parts of the United States and some to Canada. The largest number carried west from New York was to the State of Illinois, being 26,988, to Pennsylvania 23,384, to New York State 12,027, to Michigan 10,739, to Minnesota 10,334, to Wisconsin 6,840, and smaller numbers to other States and Territories.

The only legislation applicable to the care and transportation of immigrants after landing at New York City is that enacted on various occasions by the State of New York. This legislation, through a series of years, has in the main apparently been directed by humane and just motives, and is perhaps as well adapted for the purposes desired as is possible within the sphere of State jurisdiction. An act of Congress passed in 1882 provided for the levy, in the nature of

a tax, of the sum of 50 cents upon each and every person not a citizen of the United States who shall come by vessel from a foreign port to any port of the United States, the money collected to be paid into the Treasury of the United States as an immigrant fund, and to be used, under the direction of the Secretary of the Treasury, to defray the expense of regulating immigration, and for the care and relief of immigrants. Only so much could be expended at any port as the sum collected at the same port.

The Secretary of the Treasury was authorized to enter into contracts with State boards to carry into effect the purposes of the act.

Under the act the Secretary of the Treasury entered into a contract with the commissioners of emigration of the State of New York, by the terms of which the commissioners undertook to receive all immigrants arriving at that port, at Castle Garden, or some other suitable place under their control, and to provide means for their accommodation, including interpreters, and to provide suitably for the infirm and disabled for not exceeding a year.

Under these statutes and contracts the emigration commissioners for the State of New York receive the immigrants at Castle Garden, where a certain inspection and registration takes place. By arrangements with the commissioners the various railroad lines entering New York City are represented in the Garden, either by a joint agent or by their respective agents, and the immigrants after obtaining their tickets are conveyed with their baggage mostly by barges to the points where they enter cars for transportation.

The investigation by the Commission covered the conditions of transportation, the rates of fare, the character of the cars as to accommodations and comforts, and the time consumed in the journeys made. The result of these inquiries was that generally fair care and attention are given to the immigrants by the various lines, but that by all of them the immigrants are carried as a distinct class, in cars inferior to ordinary passenger cars, and by a few of the lines in very much inferior cars; that slower time is made on the journey,



and often tedious delays occur. The rates of fare charged are lower than ordinary passenger fare.

The salient facts as regards the immigrant business of the country as conducted at the city of New York may be stated as follows :

Officially it is under the supervision and control of a State board of immigration, made up of appointees of the governor and of the heads of certain charitable organizations whose functions in part are to protect the immigrants and to afford impartial privileges to the transportation lines reaching New York in respect to their carriage to their respective points of destination. Some few years ago a legislative act of the State provided for a single commissioner, but the change intended has not yet been effected. The power of the State commissioners to give full effect to the supervision necessary to the business is limited by circumstances which it is difficult if not impossible for such a commission fully to cope with.

In the first place, Castle Garden, where the immigrants are landed, is altogether inadequate in capacity for the reception, proper care, and protection of the great number who are now received there. Moreover, the location is unsuitable for the purpose. It can be easily surrounded, and in fact is generally surrounded, by a multitude of more or less unscrupulous persons, eager to reach and share the small stores of money the immigrants bring with them, and who resort to various devices to get practical control of them for the purpose. The ignorance of the immigrants in general of our language, of the country, of its customs, and its routes of travel makes them easy victims; such of them as can be enticed away from Castle Garden are subjected to impositions and extortions before they leave the city, and their transportation is sold to carriers, who buy it under the name of paying commissions.

With the co-operation and unanimous concurrence of the transportation companies these abuses might be in the main, and perhaps wholly, prevented; by their rivalries and mutual hostilities they are aggravated.

The customary charge for the transportation of immigrants

to the interior is indicated by the charge from New York to Chicago, which, when the carriers have acted in harmony, has been about \$13. This charge, as compared to that made to first-class passengers, must, in view of the greatly inferior accommodations heretofore furnished for immigrants, be deemed excessive. But independent of such a comparison, the action of the carriers will fairly sanction a reduction, if steady rates can be established and improper expenses connected with the business cut off. Receipts have not only been largely reduced by the payment of commissions which go to support demoralizing practices, but the carriers have at times reduced their rates to such figures as clearly indicate that they were named for some other purpose than that of revenue from this business. At this time, when the nominal rates are very low and the commissions paid are understood to be large, the trunk line carriers, though they are transporting many immigrants, are probably receiving no net revenue whatever therefrom. It is freely admitted in railroad circles that the condition of things as regards this business is a great public scandal.

In view of all the circumstances the Commission recommends :

That some place of greater capacity than Castle Garden be provided for the reception of immigrants, located somewhere upon New York Harbor, an island being preferable to the mainland for the purpose, but it being indispensable, whatever the place selected, that it be appropriated exclusively to this purpose, and that persons not legitimately connected with the transportation of immigrants be kept away.

That all regular lines of interior transportation be allowed to have agents at the place so provided, who may sell tickets under regulations prescribed to secure equal privileges to all, and prevent abuses.

That the payment of commissions for the routing of immigrants, and for procuring the shipment of immigrants from foreign countries, be declared illegal and be made punishable.

That the Commission be authorized to prescribe fares for

the transportation of this class of passengers, which may be revised from time to time, and which as fixed at any time, shall be the regular fares not to be departed from by the carriers. Steady rates producing reasonable revenue, and the cutting off of the existing drains therefrom into the pockets of parties whose participation in the business is harmful and demoralizing are believed to be indispensable to the due protection of this class of people, and the duty of the General Government to them will not be fully performed until these things are provided for.

These objects can not be fully accomplished except by the Federal Government taking complete control of the whole subject.

#### PAYMENT OF COMMISSIONS.

One of the open questions which operates as a disturbing element in the present aspect of railroad affairs is that which relates to the payment of commissions by common carriers.

Commissions are paid by many roads upon income received from both freight and passenger traffic. Upon some roads commissions are only paid upon passenger traffic. Some roads pay no commissions.

The purpose for which commissions are paid is unquestionably the expectation of thereby securing an increase of business to a line. The persons to whom commissions are paid in passenger service are usually men in the employ of other railroad companies. It is generally accepted among railroad managers that the sale of railroad tickets should not be in the hands of outside parties. In cities and important towns ticket offices are frequently found upon important and convenient streets and in hotel lobbies, which are maintained either by individual roads or by agreement among several roads. It is understood that the employees in this class of offices are usually compensated by regular salaries.

In some places tickets are to be found on sale in the hands of men whose whole time is not devoted to this business, and who may be compensated by an agreed commission paid upon the amount of business transacted through the agency, which is often situated at a great distance from the road mak-

ing the payment, and in a town or city from which through business is routed over another road by the line which controls the railroad ticket office. This arrangement, however, is comparatively rare, for the reason that railway tickets are almost universally interchanged at the present time. When it exists it presents merely a form of determining the amount of wages to be paid to a distant agent, which might easily be adjusted upon some other basis.

Commissions are not supposed to be paid to that class of the community known as ticket brokers or "scalpers." These parties are not recognized by the carriers as engaged in legitimate business, and are not furnished with tickets from official sources. They deal in unused coupons of through tickets originally sold running over several lines, in the unused portion of excursion tickets, in tickets bought at low rates during rate wars, and in tickets found in the hands of the public under various forms, unused. So many complaints have been made respecting the unfair devices of this class of the community in the way of diverting tickets from the use for which they were designed, and sometimes even of altering and defacing them, that their business is discountenanced by railroad managers. Generally speaking, therefore, it may be said that the persons to whom commissions are paid are almost always employees and agents of other companies.

Upon freight traffic it has been alleged that commissions are sometimes allowed to shippers, or to their clerks or friends, as a method of securing business. Such an allowance would be in direct violation of the provisions of the act to regulate commerce, because it would effect an unjust discrimination between shippers. No actual case of this kind has as yet been brought to the attention of the Commission, but it is obvious that a system which allows accounts of this class to be audited and paid, necessarily opens the door for serious abuses.

The method upon which commissions are adjusted upon passenger traffic is not altogether uniform, but is supposed to be substantially this: Ticket agents at points remote from the line which desires to pay the commissions are furnished with blanks reading as follows:

DEAR SIR: I herewith hand you my account of tickets sold over your road at this office on which you pay a commission, for the month of —.

The blank is to be filled out by the agent, with a statement of the various tickets upon which commissions are claimed, showing whose issue, the destination, the distance traveled on the road in question, the number, the rate, the amount of commission, etc., and a receipt signed by the agent is appended. This constitutes his voucher, and upon its being allowed by the auditor the agent will receive a check or draft for the amount.

Of course commissions are not paid by any road upon all its passenger traffic, but the custom until recently was generally prevalent of allowing them to ticket agents at distant points upon coupon tickets sold by them calling for transportation over any important competitive portion of most leading roads. For example, tickets sold in the Eastern States for transportation from Chicago to St. Paul and beyond would entitle the local agent who sold the through ticket to a certain amount of compensation or commission therefor. Frequently he would be entitled to several commissions upon the same ticket, where the passenger was routed over several lines consecutively.

No established rate of commission upon the sale of passenger tickets has ever been fixed, some roads having one rate and some another, or the same road having different rates at different points and at different times. The payment is not usually computed in the form of a percentage, but as an agreed sum. For example, the first-class passenger fare from Chicago to St. Paul is \$11.50; the commission upon an Eastern ticket with a coupon, Chicago to St. Paul, might be \$1, \$1.50, \$2, \$3, or \$4, as the general ticket agent of the road in question should see fit to offer or allow, although associations of roads at times undertake to fix the amount by agreement. It is understood that the last-named sum has at times been paid upon such tickets, and that upon trans-continental tickets commissions have even been allowed to the amount of \$10 to \$14, or more. Moneys received from this source have formed a very substantial part of the income of ticket agents in all

the Eastern States upon business at the West, and also of those in the West upon business at the East.

The drain from this cause upon the net earnings of the roads has been very large. It is difficult to obtain authentic statistics upon this subject, for the reason that the whole system has grown up in secrecy, and its very existence has hardly been known to the public at large. There can be no doubt but that moneys paid in the manner above described as commissions, are paid simply for the purpose of obtaining business, and should be shown in railroad accounts as charges against railroad earnings, in the same manner as it has been customary for such accounts to show money expended for advertising, for maintaining joint agencies, and for wages paid ticket agents upon their own lines.

A custom, however, has grown up under which it has been usual to conceal this class of expenditure from the knowledge of the public and of railroad stockholders as well. This has been done by the simple process of deducting all moneys paid out by way of commissions before stating gross earnings in the annual balance sheet. In other words, the money so expended is treated as though the company never had it, and by this manipulation of the account the fact of its expenditure is not disclosed.

In preparing blanks for the annual reports to be made by the carriers to this Commission, as required by section 20 of the Act to regulate commerce, this subject was considered. An appropriate heading in the blank sent out called for a statement of the amount paid by each carrier during the year as commissions, chargeable to passenger and freight traffic respectively, and the oath by which the report was to be verified embraced a statement that "no deductions were made before stating the gross earnings or receipts herein set forth." The result of this has been that in the reports for the year ending June 30, 1888, many roads show for the first time the expenditure of commissions. The returns in this respect, however, are not complete, for the reason that, the blanks not being issued until near the close of the fiscal year, the accounts had not been kept in correspondence with the requirements, and accurate information could not be readily

furnished within the time allowed. In some cases the clause above stated has been erased from the oath, and no entries made in the blank calling for a statement of commissions paid.

These matters can and will be rectified hereafter, but the returns for the present year, so far as received, do not enable the Commission to state even approximately the amount expended for this purpose. Forty-nine roads report the payment of commissions, aggregating \$1,078,128.83, and those reported by only eight companies amount to \$812,884.07. There can be no doubt but that the payments made on this account in past years by the various roads in the United States have amounted to many millions of dollars annually, and that payments of several hundred thousands of dollars by single roads have not been at all unusual.

The value of an outlay of this kind to the roads which make it is doubtful. The traffic it burdens is naturally competitive traffic; in other words, commissions are paid upon tickets between points where two or more lines compete for the business. For example, between Chicago and St. Paul six lines are offered, their trains giving like accommodations and making substantially the same time. A traveler at an eastern point has his choice of tickets over each of these six lines. The ticket agent will receive a commission on whichever ticket he sells.

If, by agreement among the competing lines, a common standard of commission is made, the ticket agent has no interest whatever to sell the ticket over one line rather than another, and in that case the roads evidently are in the same position as if no commissions whatever were to be paid by either. If one of the lines pays a higher commission than another, either secretly or by a known arrangement, the ticket agent naturally will prefer to sell a ticket over that line. Lines which pay the highest commissions are usually the least desirable lines for the traveling public, which use this method in order to obtain traffic which otherwise they would not naturally receive. The most roundabout line, or the one with the least natural advantages, by offering ticket agents at some remote points a higher commission than their



competitors allow, may be able to secure a certain amount of traffic which otherwise would not fall to it. In this case, however, the business is obtained at the expense of the ignorant purchaser of the ticket, who is routed over a line which he would not have chosen had all the facts and circumstances been understood.

The situation, then, is this: If all lines competing for a certain traffic pay the same commissions the payment is of no use to any of them; while if they pay different commissions the one paying the highest rate may secure business which it otherwise would lose, but very likely at the expense of the comfort and convenience of the traveler. If the facilities of two lines are equal and one pays higher commissions than the other, the advance must and will be met by its competitor as soon as known, to the mutual loss of both.

Certain other considerations are usually presented as reasons for the maintenance of this system. It is said that the salaries paid ticket agents are very small, and that it is quite right that they should be permitted to increase their emoluments by payments of this kind received from distant lines. The obvious answer to this is that, if their wages are too small, they should be increased by the line in whose service they are engaged. This could be done very considerably upon many lines without any loss of revenue, provided the payment of commissions to employees of other lines was discontinued. There is no reason why any road should expect to have any part of its salary account made up by contributions from other roads, and especially to have this made up by a method which has been said to give to station agents at important points an income greater than that of their own general manager. Such payments are obviously not proper compensation for service rendered.

It is also sometimes claimed that if commissions are allowed to agents at remote points it thereby becomes their interest to post themselves upon routes and facilities, and generally to obtain such information as will be of assistance to them in their relations with the traveling public. In reply to this it may be said that their direct employment, which is at once an employment in the service of the carrier and in the inter-

est of the public, imposes upon them this very duty, and a person who pays no heed to it except when hired specially to do so is unfit for the position of agent. Moreover, if the payment of a higher commission upon a less desirable route is made, then the ticket agent has direct inducement to lead the traveling public astray, while if all the competing roads pay the same commission, so that no inducement is offered to the ticket agent to vary from the absolute truth in his representation concerning routes and facilities, then neither of them is the gainer; it is hardly conceivable that railroad companies would find it for their interest to expend large sums for the education of station agents at remote points of the United States without the expectation of some practical equivalent in return.

It is no doubt true that certain western lines which have made the advocacy of commission payments a prominent feature of their policy, and which have distributed large sums in this manner among ticket agents of the East, have thus established a connection between themselves and the agents receiving their bounty, which results in more or less advantage to them, and which has stimulated the agents in question to more fully post themselves in respect to all possible arguments that a runner could use in seeking to direct traffic over their routes to the exclusion of others. The indirect advantage thus obtained is perhaps the best argument that can be advanced in support of the practice. Its fallacy lies in the fact that such an advantage is not legitimate. As between the ticket agent and the public, there should be no inducement tending to put the former in the position of a drummer for business in behalf of a particular route; his true position is that of a servant of a common carrier, taking the money of the people as an equivalent for a public service; and as between the ticket agent and his immediate employer, there certainly should be no temptation tending to induce the latter to favor one remote connection rather than its equally remote competitor. The act to regulate commerce, as well as the most obvious requirements of fair dealing as between distant carriers, demand that equal facilities shall be afforded for the interchange of traffic and for the forwarding

of passengers to and from their several lines. To permit an agent to entertain a preference based on his personal interest necessarily tends to the discrimination and preference between connecting lines, which the law, as well as ordinary commercial integrity, condemns.

Probably the best light in which the system could be presented would be in the form of a universal arrangement by which all agents of foreign roads selling tickets for the carriage of passengers between points of competition should receive a fixed percentage of the value of the coupon. This might be called compensation in the form of wages measured by the results accomplished. And it would to some extent encourage distant agents to prepare themselves to give information to the public. But in that form the system would not be wanted. It would put every line upon an equal footing and would do no good to any of them, while it would put the compensation received by station agents upon a most grossly unequal footing, by which some of them could soon retire in opulence. And it would practically lead to the cessation on the part of most roads of paying their station agents at all in large cities and towns, since the revenue to be derived from foreign roads would make the positions eagerly sought for without any pay from the direct employer, and perhaps even at a premium. In other words, the pay of this class of railroad employees would be largely provided by other lines than those for whom the service is rendered and which are responsible for their conduct. The demoralizing effect of such a state of affairs is obvious. A man works for the man who pays him.

On the other hand the evils of the system are much more clearly apparent than its advantages. They may be summarized as follows:

The direct effect is the payment of large sums of money from corporate earnings, for which the stockholders and the public receive no adequate return. The sums so paid are in the aggregate appalling, while the aggregate receipts are not at all increased. No travel is originated by the system, as is sometimes true in respect to excursion trains and rates. It only operates to direct, and often to divert, traffic which seeks

to be transported. Considered in its totality, the money so paid out is the money of railroad stockholders, but it is collected from the public, and the collection is just so much in the aggregate more than the public can properly be called upon to pay for railroad service. The rates which the public pay are made to provide for this drain on the corporate treasury.

In the report of the Senate Committee on Interstate Commerce, whose investigations preceded the adoption of the present law, the following charge was made and found sustained, to wit:

That the management of the railroad business is extravagant and wasteful, and that a needless tax is imposed upon the shipping and travelling public by the unnecessary expenditure of large sums in the maintenance of a costly force of agents engaged in a reckless strife for competitive business.

That investigation did not embrace the subject of the payment of commissions; it does not appear that the fact was then in any way developed, or was even known, that a needless tax was imposed upon the traveling public by the unnecessary expenditure of large sums in the subsidizing of agents of other lines at distant points in carrying on a reckless strife for competitive business; yet the application of the language used by the committee is apparent; and the fact is obvious that the management of railroad lines which permit it is extravagant and wasteful, and that the traveling public bears the burden of the extravagance.

The indirect effects are even more dangerous to the public. The blank above mentioned, upon which commissions are receipted for and collected, contains the following certificate which the agent is required to sign:

I certify that no portion of the commissions to be paid on this statement has been used in cutting rates, directly or indirectly, and I agree that no portion thereof shall be so used.

What does this certificate obviously suggest but that the natural tendency of the offer of a commission is to enable the agent to cut the rate by dividing his commission with the passenger? Supposing that there are two routes available from

Chicago to Omaha, one of which pays a commission of \$2 to agents in the East, is it not money in the pocket of the agent to sell the ticket for \$1 less than the standard rate in order to obtain the other dollar for himself? Or even to sell a hundred such tickets to a scalper at \$1.75 less than the regular rate, the shave to be again divided with his customers? What then becomes of the law which forbids a common carrier to receive from any person a greater or less compensation than from another for a like service? It is not known whether this form of certificate is or is not in general use, nor how effectual it proves in practice to prevent the violation of the law which the offer of commissions so pointedly invites; but a course of business which requires a certificate that in transactions under it one of the parties shall not so conduct as to involve the other in a breach of law, is certainly in itself to be condemned.

The tendency of the system is also directly in the line of fostering other irregularities and evils.

The class of persons called "scalpers" are mentioned above as persons not recognized by the carriers as having a legitimate employment. It is a matter of common observation, however, that this class is numerous. In all considerable cities they have fine offices, and all appearances indicate that their business is both considerable and profitable. Their income comes directly or indirectly from railroad companies. It comes from the purchase at one price and the sale at a higher of tickets which the companies have once sold, but which, in the hands of the purchasers, have been availed of for railroad service in part only or perhaps not at all. So long as a railroad company recognizes such a ticket as valuable for any purpose there would seem to be reasons of sound policy requiring their redemption by the company itself at its regular offices.

A fair rule to this end would take away very much of the income on which scalping offices are now supported and tend greatly to reduce their number. It is believed, however, that railroad managers themselves are not always in hostile relations to scalpers, but that in times of rate war, and sometimes also when competition has not reached the point of open

belligerency, they avail themselves of the services of this class of persons.

This subject is thought to be of sufficient importance to justify the Commission in bringing it to the attention of Congress and of the public.

#### CONCLUSIVE BILLS OF LADING.

Among the subjects that have been brought to the attention of the Commission as requiring legislation is that of conclusive bills of lading. Complaints are often made that when grain, seeds, or other articles commonly forwarded in bulk, are received by the carriers and forwarded as being of a certain quantity or weight, it is not infrequent that at the point of destination a deficiency is reported, and the consignor having no means of fixing the responsibility upon any particular carrier when the freight has passed, as is commonly the case, over several roads, is compelled to bear the loss.

This, it is said, is unjust. The carrier which receives the grain or other article should satisfy itself at the time as to the quantity or weight, and the bill of lading, issued for it to the consignor, instead of expressing that the quantity is said to be or supposed to be so much, should be absolute and unconditional, and the recitals should attend the property throughout and be available on behalf of the consignee at the point of destination.

Legislation of the sort proposed, so far as it is designed for the benefit of the consignor or consignee only, would be chiefly important in the case of grain.

The objections to such legislation from the standpoint of the carriers spring mainly from two causes.

The first cause is, that grain received by one carrier will commonly, as has been above stated, pass over several lines before it reaches its destination. If it were to be delivered to the consignee by the same carrier who received it, the objections to such carrier being bound absolutely by the statement of weight or quantity given on its receipt would be much more easily met. The carrier ought, it would seem, to ascertain the exact fact at the outset, and it ought then to be responsible for the conduct of its agents until delivery was

completed. But when delivery is to be made at a distant point, and the handling may for a considerable time be in the hands of agents of other carriers of whose carefulness or integrity the initial carrier will know nothing, and over whom it can have neither supervision nor control, there may well be hesitation about assuming a position which will make the initial carrier the guarantor of the integrity and the accuracy of every agent or other carrier who may be concerned in either the transportation of the grain or in its delivery.

The risks even then might not be very great on the main lines of the country, which carry grain for the most part between the great cities, where everything can be done under a supervision with which all are satisfied, but grain from the West is largely shipped into New England and into the Southern States for delivery at small stations in car-load lots, and also sometimes in quantities less than a car-load, and any supervision of the delivery, except such as the local agent will give, is practically out of the question. And as the consignee, if the bill of lading were made conclusive, would be less likely to be vigilant in watching delivery than he feels it for his interest to be now, it is not unlikely that the cases of supposed shortage would be more numerous than ever.

In view of this fact, one question that naturally presents itself is, whether one effect of such legislation might not be to make it for the interest of carriers to restrict the bills of lading given by them to their own lines instead of joining in through-traffic arrangements. If that were done, each carrier in succession would ascertain what it received, and must at its peril deliver it to the next carrier in line, but the responsibility would not go further. No provision of the act to regulate commerce compels carriers generally to enter into joint arrangements or to become mutually responsible for each other's conduct, but the traffic arrangements now accomplish this to a very large extent, and they are of great public convenience and utility. Whatever should be calculated to diminish the number of such arrangements ought to be supported by very strong and conclusive reasons to warrant its adoption.



The second reason for objection connects itself with the expense.

When the initial point of shipment is Chicago or any other great center of grain traffic it may be assumed that the carrier will not be prepared with all necessary means of determining the weight or quantity. But the means of expeditious weighing or measuring of large quantities are expensive, and few roads could afford to have them at all stations where the merchandise might be offered for reception. To require the accurate determination to be always made would be to add sensibly to the cost of the carrier's service, and this increased cost it would be claimed the owner who was to have the benefit of it ought to pay. In the case of grain received from another road, the necessity for re-weighing would be the same as when received from wagons.

When the carrier is only seeking to arrive at the quantity for the purpose of computing its charges, precise accuracy is not very important, and the weight of grain in a car will be taken to be the gross weight of car and all, with the weight stencilled on the car as its weight deducted; but a little variance in the weight of the car which would be insignificant in computing charges would be so important when counted as grain to be paid for that the carrier could not afford to take the risk of it. The grain, it might be assumed, would therefore commonly be transferred from the car bringing it in, for the purpose of accurate weighing.

Even in the large cities, where the means of properly determining weight or quantity may now be supposed to be complete, legislation of the sort proposed would almost necessarily add something to the cost of the carrier's service. Large quantities of grain are now delivered upon the cars from elevators, some of which are public and under official supervision, and some not. The carriers, it is believed, have been accustomed to receive the weights given them at both the public and the private elevators as accurate; but with the increased responsibility they would be likely to decline to do this in the case of private elevators, and to require the weighing to be done under their own supervision. This would perhaps lead to the appointment by railroad associations of

a force of weighers and gaugers to take charge of work of this description for all the roads.

These facts are mentioned in this place in order that they may not be overlooked in any consideration that may be given to this subject with a view to legislating upon it. The matter of additional cost is specially important because the necessity for vigilance on the part of the carrier will be made more imperative by the fact that the temptation on the part of the consignor to deceive and mislead will be greatly increased when he knows that the bill of lading he succeeds in obtaining, though perhaps by artifice and deception, will be conclusive in his favor.

It may be mentioned, also, that the burden of making provision for accurate weighing at initial stations will be likely to be more severely felt by the smaller and weaker roads than by the main lines.

When the matter of additional cost in giving better service to the public is spoken of it is not uncommon to hear the remark made that whatever cost is necessary to be incurred in order to give the best service, the railroad company ought to bear. This is undoubtedly true. But if the person making it means to be understood that the railroad company should bear any additional cost that may be necessarily incurred in order to improve its service, and should not increase the charges to its patrons, the remark could not be true unless the charges previously made were greater than they should have been. A railroad company has no fund from which to pay cost of service except such as the returns from the service bring it. The principle applicable in the case is, that the company may justly be required to give the public the best practicable service, because it is supposed to levy upon the business such charges as will meet the cost of the best service.

A further objection to making bills of lading conclusive—that it will offer a premium for frauds—is alluded to below.

But a pressure to have these bills made conclusive of the receipt of the property, and that it corresponds to all the particulars specified therein, comes also from bankers and brokers who are accustomed to make advances upon them.

It is a common practice for shippers of leading products of the country, particularly cotton and tobacco, to obtain from their bankers advances on their bills of lading, and where the property is of such a character that it is readily convertible into money the convenience is very great.

The owner may expect to obtain advances to something near the value, and he is relieved from the necessity of asking accommodations from others in the way of indorsements in aid of his personal credit. But the bill of lading, under the law as it now is, does not conclusively settle, in favor of the party advancing money upon it, the fact that the carrier has received the property specified, but the carrier may prove when the property is demanded, that its agent, by collusion with the party named as consignor, gave the bill without the receipt of any property whatever, or that intentionally or by mistake he overstated the quantity or the weight, or gave false particulars calculated to make the apparent value of the property greater than it was in fact. Such proof is understood to reduce the responsibility of the carrier to what it would have been had the bill of lading been entirely truthful, but the consequence may be that the party who has advanced money in reliance upon it may lose his advances.

This it is claimed is unjust. The carrier it is said should be responsible to the full extent for the acts of its agent, and all parties whose interests may in any way be affected by a reliance upon them should be protected as completely as if no mistake and no fraud had been committed. On the other hand, it is answered on the part of the carriers that to make the bill of lading conclusive would be to offer a premium not only for deception to be practiced on the part of dishonest parties upon agents, whereby an untruthful bill of lading may be obtained, when the agent is honest and intends to be careful, but also for collusion between dishonest parties and agents whom they may corrupt. The number of persons whom carriers must employ is so great that the possibility of finding among them one or more who may be thus corrupted is always imminent, and the carriers insist that while the rule of absolute conclusion in such cases would be seriously damaging to them, it would be bad also on grounds of public

policy because of the temptation it would offer for the corruption of agents in their service.

The question involved is whether it is important and desirable to extend the principle of negotiability so as to include bills of lading among the instruments which are fully protected in the hands of an innocent holder. For reasons which are deemed important in commercial transactions, bills of exchange and promissory notes, payable to bearer or to order and properly indorsed, in the hands of any *bona fide* holder for value who receives them before they are dishonored, are not affected by any equities that might have existed in behalf of the parties chargeable thereon while they remained in the hands of the parties to whom they were given. This quality of negotiability is, no doubt, an important and valuable one, at least so far as bills of exchange are concerned; but as to promissory notes doubts are sometimes expressed whether the evils do not overbalance the advantages.

It is well known that for many years parties have made a business of selling pretended or worthless patent rights on other things of shadowy value, and of obtaining therefor the notes of credulous persons, which, though invalid in the hands of the takers, become conclusive, as soon as a third party acquires them, that the makers have received full value. The frauds in these and similar cases have been very extensive. The carriers also claim that the law as it now is, sufficiently protects the party advancing money on a bill of lading. He makes the advancement in reliance upon the good faith and integrity of the party presenting it, and he may resort to that party for indemnification in case anything is wrong or defective. It is further claimed that under the law as it now is no difficulty is experienced in obtaining loans on bills of lading, and therefore no reasons of public urgency demand legislation on the subject.

This subject is alluded to in this place because of its relations to what precedes, but the Commission makes no recommendation regarding it.

Akin to this subject of conclusive bills of lading is that of protecting the bills given in respect to charges when the charges are specified therein.

Complaint has in several instances been made to the Commission that where carriers had received property on definite statements of what the charges would be, and had specified the charges in the bills of lading, the amount which the consignee was compelled to pay was a sum in excess of that specified. Investigation disclosed the fact that a number of reasons had in different cases been operative to cause the discrepancy. Sometimes the amount charged was greater than it was expected to be, because of some misunderstanding on the part of the agent of the carrier receiving the property as to what were the rates on a connecting road, or because some joint rate was raised without previous notice of the purpose, or was suddenly withdrawn from. But sometimes the addition made to the rate stated might be due to the correction of an error in the original weighing, measurement, or marking of the freight carried, so that the payment finally exacted was only what was properly and legally chargeable. More often than from any other cause increase of charges specified has come from exercise of the power the carriers claim to change at pleasure the relations they enter into with other carriers for through rates.

The consequence when this is done may be that one carrier may have given bills of lading which others, when the property comes to them, will, so far as the charges mentioned are concerned, refuse to honor. The loss must then fall either upon the owner of the property or on the carrier giving the bill.

Most of the cases brought to the attention of the Commission were cases of consignments made in southwestern States to northern Atlantic sea-ports, and which must pass over a number of roads. It was ascertained, however, that the initial carriers recognized their obligation to protect the bills given by them, so that the unexpected increase in charge, though it might subject the consignee to the necessity of paying it in the first instance, was not a loss to him or to the consignor, but to the initial carrier. Even this necessity of advancing a sum unexpectedly was complained of as a hardship, and it was thought it should be guarded against by some order of the Commission which should require delivery of

the property to the consignee on payment of the charges specified; but the Commission has not thought it had the power to compel any carrier to deliver up property on the payment of less for its own service than it had a right legally to receive, nor that it could require a carrier in one part of the country to look to a carrier at a distance for its charges instead of to the lien on the property in its hands. The most that can reasonably be required in such a case is that the initial carrier shall promptly settle claims for excessive charges, and this in the cases investigated the carriers showed no disinclination to do. Some of them insert in the bills of lading issued by them the following clause:

It is understood that all connections recognize this bill of lading and will settle freight accordingly.

The traffic managers of the Louisville and Nashville Railroad Company, an important line extending from the Ohio River to the Gulf, states the policy and practice of his company as follows:

(1) In case the delivering line does not protect the rate stated in the bill of lading, this company will at once settle overcharges on presentation of the bill of lading and expense bills showing what has been paid at the point of destination.

(2) This company protects bills of lading issued by any company covering freight deliverable at any point on its road, and undertake to do so at once and without delay.

(3) This company also protects bills of lading issued by what are known as fast freight lines when shipments are delivered at any point on its road.

(4) In cases where fast freight lines issue bills of lading for cotton or other commodities shipped from points on the line of its road, this company will protect the rates named in such bills of lading, and in case overcharges occur will refund on presentation of bills of lading and expense bills showing what has been paid at point of destination. In other words, this company, so far as it is in its power, undertakes to promptly protect rates of freight stated in bills of lading.

This is a liberal practice and no doubt a wise one. It is substantially pursued by other lines in the same territory. It goes beyond any existing requirement of positive law, and the carriers following it will very likely be subjected to occa-

sional vexations and perhaps losses from the carelessness or improper conduct of agents of other carriers. But they will gain the favor of patrons by their course, and in many ways will be incidentally benefited.

#### THE GOVERNMENT-AIDED RAILROAD AND TELEGRAPH LINES.

By act of Congress approved August seventh, eighteen hundred and eighty-eight, entitled "An act supplementary to the act of July first, eighteen hundred and sixty-two, entitled 'An act to aid in the construction of a railroad and telegraph lines from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes,' and also of the act of July second, eighteen hundred and sixty-four, and other acts amendatory of said first-named act," certain powers and duties in relation to these lines were devolved upon this Commission. A copy of the act appears in Appendix F, relating to the Government-aided railroad and telegraph lines.

The first section of the act provides that all railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which by law are required to construct, maintain or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines shall forthwith and henceforward, by and through their own respective corporate officers and employees, maintain and operate for railroad, governmental, commercial and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants of Government aid.

The second section provides that whenever any telegraph company which shall have accepted the provisions of title 65 of the Revised Statutes shall extend its line to any station or office of a telegraph line belonging to any one of the railroad or telegraph companies referred to in the first section, the telegraph company so extending its line shall have the right to connect with the telegraph line of the railroad or telegraph



company referred to in the first section to which it is extended, at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between such companies; and the railroad and telegraph companies referred to in the first section are required to allow such connection to be made and to so operate their respective telegraph lines as to afford equal facilities to all without discrimination, and to receive, deliver and exchange business with connecting telegraph lines on equal terms, affording equal facilities without discrimination for or against any one of such connecting lines; and such exchange of business to be on terms just and equitable.

The third section provides that if any railroad or telegraph company referred to in the first section, or company operating such railroad or telegraph line, shall refuse or fail, in whole or in part, to maintain and operate a telegraph line as required by law, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then complaint may be made to the Interstate Commerce Commission, whose duty it shall be, under such rules and regulations as the Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, the railroad or telegraph company concerned to abide by and perform such order; and the order may be enforced by mandamus in the courts of the United States. The Commission is also authorized to institute any inquiry upon its own motion in the same manner and to the same effect as if complaint had been made.

By the fourth section the Attorney-General of the United States, in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to the railroad and telegraph companies referred to in the first section, and to have the same possessed, used and operated in conformity with the provisions of this act and of previous acts, is required, by proper proceedings, to prevent any

unlawful interference with the rights and equities of the United States under any law of Congress relating to such railroad and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies.

By the fifth section any officer or agent of said railroad or telegraph companies, or any company operating the railroads and telegraph lines of said companies, for any failure to operate their telegraph lines, as required by law, and to afford to the Government and the public equal facilities, or to secure to connecting telegraph lines equal advantages and facilities in the interchange of business, without discrimination, or for refusal to abide by and perform and to carry out, within a reasonable time, the orders of the Interstate Commission, shall for every such refusal or failure be guilty of a misdemeanor, and, on conviction, be fined a sum not exceeding \$1,000, and may be imprisoned not less than six months, and the aggrieved party is also given a right of action for damages against the company whose officer or agent may be guilty of such failure or refusal.

The sixth section makes it the duty of every one of the railroad and telegraph companies referred to in the first section, within sixty days after the passage of the act, to file with the Interstate Commerce Commission copies of all the contracts and agreements between it and every other person or corporation in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines or property over or upon its rights of way, and also to make a report describing with sufficient certainty the telegraph lines and the property belonging to them, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title

or interest, and setting forth the grounds of such claim, and the manner in which the same are being then used and operated. The said companies are further required annually to report to the Interstate Commerce Commission, with reasonable fullness and certainty, the nature, extent, value and condition of the telegraph lines and property belonging to them, the gross earnings, and all expenses of maintenance, use and operation thereof, and their relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports to be prescribed by the Interstate Commerce Commission; and any refusal or failure by any of said railroad or telegraph lines to make such reports, or any reports which may be called for by said Commission, or refusal to submit its books and records for inspection, it is provided, shall operate as a forfeiture in each case of a sum not less than \$1,000 nor more than \$5,000, to be prosecuted for by the Attorney-General of the United States.

Upon the expiration of the sixty days within which the railroad and telegraph companies were required to file with this Commission all contracts and agreements in reference to the ownership, possession, maintenance, control, use or operation of any telegraph lines or property upon their rights of way, and a report describing their telegraph lines and property, and the manner in which they were being used and operated, the Commission notified the various railroad and telegraph companies referred to, by circular, a copy of which also appears in Appendix F, of their duties under the act, and called upon them to transmit, with as little delay as possible, the contracts and reports required to be filed with the Commission.

Since the reception of the notice, the Commission has received from some of the railroad companies copies of their contracts with telegraph companies, and has been informed by others that the contracts and reports will be transmitted as soon as the copies can be made and the reports prepared.

Until the documents required by the Act shall be received it will not be possible for the Commission to make any com-

plete or satisfactory report to Congress upon these subjects. The Commission has ascertained, as accurately as possible, the names of the various railroads aided by Government subsidies of any kind, and the names of the railroads that have been so aided to assist in building telegraph lines. A list of these several roads is given in Appendix F. References are also given in the same appendix to the legislation of Congress in respect to the duties of railroad companies receiving Government subsidies to construct, maintain and operate in the manner required by law telegraph lines for the uses of the Government and the public.

Title 65 of the United States Revised Statutes, referred to in the act of August 7 last, gives to telegraph companies organized under State laws rights of way over any portion of the public domain of the United States and over and along any of the military or post roads of the United States, and over, under or across any navigable streams of water of the United States, but the lines must be so constructed and maintained as not to obstruct navigation or interfere with ordinary travel on military or post roads.

The same title also gives the right to take and use from the public lands through which their lines may pass the necessary stone, timber and other materials for its uses, and to pre-empt and use certain portions of the unoccupied public lands subject to pre-emption through which their lines extend, not exceeding 40 acres for each station, the stations not to be within 15 miles of each other.

The jurisdiction of this Commission, under the act of August 7 last, extends to the hearing of complaints for a neglect or refusal of telegraph companies subject to the acts of Congress to maintain and operate telegraph lines as provided by law for the uses of the Government and the public for commercial and other purposes, without discrimination, or like neglect or refusal to make or continue such arrangements for the interchange of business with any connecting telegraph company, and to determine and order what arrangement is proper to be made in any particular case; and the Commission may also institute any inquiry upon its own motion in the same manner as if complaint had been made.

The Commission is also required to report to the Attorney-General all cases of neglect or refusal by any of the railroads or telegraph companies referred to in the act to make an annual report, or any report that may be called for by the Commission, or any refusal to submit its books and records for inspection, to be proceeded against according to law.

No formal complaints have as yet been made under this statute, nor has the Commission been called upon to take any official action in respect to any of the railroads or telegraph companies specified in the act.

The Commission is not in possession of sufficient data to make any further or more extended report upon this subject. The forms to be prepared by the Commission for the annual reports of the telegraph companies are under consideration and are expected to be completed seasonably for the purpose of returns to embrace the current fiscal year.

#### ANNUAL REPORTS FROM CARRIERS.

The twentieth section of the Act to regulate commerce provides:

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require, and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within

which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

The care with which this section is framed and the prominence given to the subject of railroad statistics in the report of the Senate Select Committee on Interstate Commerce, indicated very clearly to the Commission the importance of careful and thorough work in executing its provisions. Allusion was made to the subject in the first annual report of the Commission, at page 29. At that time the foundation had been laid for the system which has now been fully developed and put in operation.

In view of the infinite diversity that has heretofore prevailed in the matter of railroad statistics the task of framing a form of universal application was found exceedingly difficult. At the same time it was obvious that the formulation of a system in which it might be possible for all the carriers in the country to unite was most important. This fact involved the consideration of the requirements of many different interests. A general basis was found in the provisions of that portion of the act above quoted. The obligations imposed by State legislation upon the various State railroad commissions which have been organized from time to time in different parts of the country were also important. A Bureau of the Department of the Interior had for some years been engaged in the collection of statistical information in great detail from a large number of important roads which received aid from the United States in the form of land grants and subsidies. The carriers themselves were accustomed to collate and present annually, for the use of their directors and stockholders, information in more or less detail concerning the workings of their respective lines.

Some of the information which it has been the custom of intelligently managed corporations to tabulate and make public is of especial value to their own officials and subordinates in securing the economical working of their lines, and in adjusting transportation charges; and the importance of statistics of this character is many times increased by an opportunity for comparison between results obtained upon

different lines in the same or in different sections of the country. The report of the Senate select committee above referred to also recognized the importance of reliable and accurate information for the use of investors in railroad securities; a class of the community whose almost sole dependence in the past has been the unofficial, though painstaking, annual compilation by private enterprise of a manual the great circulation of which demonstrates the necessity for its existence.

The first step, therefore, was to obtain by correspondence the largest possible number of blanks and forms as prepared by the various railroad commissions above referred to, and as in use by railroad accountants throughout the land. The statistics obtainable in other countries were also examined so far as possible, and the best attainable publications upon the subject were consulted.

In October, 1887, a circular was issued to all carriers, as well as to the various State commissions and other persons supposed to be interested in the general question, directing attention to the subject, and announcing that it would be considered at a public session of the Commission to be held in Washington on October 26, at which time all persons were invited to appear and be heard, or to furnish any written or printed suggestions that might occur to them. This circular elicited considerable correspondence, and a large number of State and railroad officials were in attendance at the time announced. A free interchange of views was had in respect to the general scope of the reports to be required, and more particularly in respect to the date which should be taken as a common period for their compilation. Upon this subject a great diversity of opinion was manifested, arising from existing methods under which it had been customary to close the books in different states and on different lines at different periods throughout the year. The conclusion reached by this Commission upon this point was announced in the following language:

It is essential that a uniform date be adopted for the annual closing of the books and striking of the balances of all the carriers throughout the country. A careful consideration of this subject has led the Commission to



the belief that the date most useful in itself, and most likely to be generally accepted, is the 30th day of June. It is not possible to state all the reasons which have led to this result, but among the most important are the following: That date is the end of the fiscal year of the United States. The books of all the departments of government and its accounting officers are settled as of June 30. These reports are required for transmission to Congress, which meets annually on December 1. If they are filed with the Commission by September 1 (or possibly 15), the remaining time will be necessary to enable useful work to be done in the way of compilation and of deductions, to be properly laid before Congress at the opening of its session, with as much of freshness in the information so obtained as seems reasonably practicable.

The same thing is true of the reports to the various State legislatures. Some change in the legislation of some of the States will probably be required to effect the adoption of a uniform date, but it is obvious that the date proposed will involve less change than any other that can be named. More of the State reports are now made as of June 30 than at any other period, although some are required to December 31, and some to September 30. By far the greater number of the State legislatures meet in January, and the considerations above stated as adding to the value of a June 30 report for the information of Congress apply as well to the State legislatures. It is, moreover, the belief of the Commission that the date stated will involve less change in corporate methods of book-keeping than any other, and that the result will be generally satisfactory for the purposes of the corporations themselves. At present the whole matter is confused and burdensome. It seems best that this Commission should take the initiative and endeavor to bring about order and uniformity. It is not proposed to act arbitrarily or unreasonably in so doing, but to find the most feasible and convenient standing ground for all.

The preparation of a form was then entered upon, and a proposed or experimental set of blanks was printed in January, 1888, which was distributed to State boards, railroad accountants, and other persons interested. In that connection it was explained that these blanks were circulated for examination and criticism in order to obtain the fullest possible comparison of views before a form should be definitely adopted; it was also explained that no very radical departure from existing methods was proposed; that the forms required by State commissions were made the basis of the draught; that a very substantial benefit would result from the passage of the act if the plan which the Commission should finally adopt might be made the basis of a form to be brought into general use for all reports, and therefore that a prominent object had been to prepare blanks which should contain all

the more important information usually to be found in railroad reports, and at the same time be susceptible of expansion in detail to meet the requirements of State statutes and of exacting accountants and boards of directors. Some further explanations were made, and the subject was thrown open for suggestions from any and all persons interested.

Much correspondence was elicited in response to this invitation, and on March 28, 1888, a meeting of railway accounting officers was held in Washington to consider said proposed form of annual report. This meeting was attended by the representatives of more than 70,000 miles of railroad, and the blanks under consideration were taken up and discussed in detail. Many suggestions were made which were obvious improvements, and were incorporated in the final form. Conferences were had with State and railroad officials in New York City and elsewhere, and the vast amount of matter accumulated was carefully examined and digested. The form ultimately determined upon was the result of great consideration and a sincere effort to harmonize all the requirements of the situation so far as practicable. The necessary blanks were printed and distributed to the carriers in the month of June.

It was known that considerable time would be required after the termination of the fiscal year for the closing of accounts and the compilation of statistical matter, in order to enable the carriers to satisfactorily respond to the requirements of the blanks; it was believed that a period of two months and a half would perhaps be adequate for that purpose, and September 15 was named as the date for filing the returns. Many carriers, however, found themselves compelled to ask for further time. In view of the radical changes in the system of accounting necessary on the part of many roads, and of the fact that many topics were embraced upon which current records had not been kept during the year by the carriers, of the further fact that each carrier has had its own methods of book-keeping and its own time for striking its annual balances, and in view of the magnitude of the work involved in many ways, the Commission felt disposed to treat the subject of the time of filing the first reports

liberally, believing that after the procedure under the law shall get fairly under way, future reports will be prepared with very much less difficulty. The time of filing the reports for this year has therefore been extended. In many cases a full compliance with all the details of the blanks has not in every instance been insisted upon, especially where the existing records of the carriers have not been so kept as to afford the necessary information.

The names of the carriers from which reports have been received for the year ending June 30, 1888, are shown in Appendix H, as well as those which have not as yet filed returns. It is proper to add that many of the companies in the latter category state that their reports are nearly complete and will soon be sent forward.

After fixing the date on which the reports should be made the next important question under the law was in relation to what carriers should be called upon to make reports. Many of the shorter roads, situated wholly within the boundaries of a single State, were inclined to entertain the view that they were not subject to this section of the interstate commerce law. Other carriers, similarly situated, including some very important lines, entered heartily into the plan of a universal system of reporting. The position taken by the Commission upon this question was announced in a circular issued June 1, as follows :

The act applies to all common carriers engaged in such transportation of passengers or property as is described in its first section. Very many railroads which are located wholly within one State are, nevertheless, very largely engaged in interstate commerce. In fact, under the present methods of conducting joint traffic, nearly every road, however short its line, unites in making through rates, under which it issues and receives tickets or bills of lading, in connection with roads in other States, upon which passengers and freight are transported across State boundaries; the revenues of every such road are derived, to a greater or less extent, from the traffic which is regulated by the provisions of the interstate commerce law.

The information which this law authorizes the Commission to require is very general in its nature and scope. It is apparent that it was the purpose of Congress to inaugurate an annual collection of statistics, which should faithfully present the entire transactions of every railroad in the United States for the preceding year, and that the information so obtained should be authoritative and trustworthy.

Such returns, when arranged upon a uniform system and presented under

official sanction, can not fail to be of great interest and value to all carriers, as well as to Congress and the public.

As to many of the matters enumerated, the value will be greatly lessened if the statistics are incomplete. If the efforts of this Commission shall be seconded by the railroad companies and by the various State railroad commissioners, it is entirely feasible to speedily bring all railroad accounts throughout the United States upon a uniform basis, and to present them annually to the country and to the world in a manner worthy of the importance of the subject.

The blank about to be issued is believed to be the closest approach to a universally satisfactory system which has yet been made in this country. It is also confidently believed that there is no information asked which the carriers cannot readily furnish and will not cheerfully give, and it is hoped that every detail of inquiry has a permanent value.

The Commission, therefore, without ruling definitely upon the question of what railroad companies may or may not be required by the act to file the returns in question, will furnish blanks to *every* railroad company in the United States, whatever its situation or relative importance, in the belief that every carrier will cheerfully and promptly contribute its share towards the attainment of a complete and trustworthy annual exhibit of the entire railroad system of our country.

The form issued is published in Appendix G, together with the answers returned by one carrier, which may be taken as representative of all. For this purpose the return of the Northern Pacific Railroad Company has been selected. It is manifestly impossible at the present time to reproduce all of the returns on file, but by reference to the return of this company the extent and value of the information accumulated can be better understood, and the reasons operative in the preparation of the form, in some important particulars, can be more clearly explained.

The first great difficulty met in devising a universal blank was found in the fact that a large proportion of the companies upon which franchises as common carriers have been bestowed by the various States and Territories, and by the General Government, are not now in their own corporate capacity actually conducting transportation. The tendency has been and is to consolidate and combine the control of large systems in a single management. This has been effected at times by consolidation or by purchase, but more usually by leases, or through proprietary control resulting from the acquisition of the title to stocks, bonds, and other

securities. The act requires that the annual reports filed shall show in detail the amount of capital stock issued, with the dividends thereon, the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the carrier's property, franchise and equipment, and other matters; and it clearly contemplates obtaining a complete exhibit of the financial condition and operations of the entire railroad system of the country.

It therefore became necessary at the outset to establish a general division of carriers between those actually operating transportation lines and those not so engaged. This distinction lies at the foundation of the blanks, the operating carriers being required to make a complete report in their own behalf of their financial situation and of all the operations which they conduct, while the leased and proprietary carriers are required to make a financial report only, showing their organization and capitalization, together with the income received by way of rentals and otherwise, and the disposition made thereof. The blanks are so framed that they can be applied to either class of corporation.

It was a matter of great difficulty to obtain an accurate list of the railroad corporations of the land, divided as above required; the situation was complicated by the fact that in many cases roads have been built and immediately leased to other roads, which in turn have been leased with all their subordinate roads to a third, and at times the process has been carried even further than this; moreover, there is a class of operating companies which control and manage many very important systems, which of themselves are not owners of any road whatever, but have taken leases or otherwise acquired the possession of lines of road legally belonging still to the subsidiary corporations, frequently different forms of title appearing under the same general management; many roads also are carried on by receivers, or by trustees for bondholders into whose hands the stockholders have surrendered their present control; in other cases corporations organized originally for other purposes have been granted powers for the operation of railroads in connection with other business, so that their capitalization does not represent

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railroad property solely, but frequently is founded upon large ownership of coal or other mines, of canals, and even of banks; many cases are found in which large grants of the public domain have been bestowed upon carriers, which treat the proceeds of the sale of the lands as part of their general assets, and which issue securities based upon their ownership of real estate generally as well as of railroad property. In the formulation of the blanks it was necessary to keep all of these diversified and incongruous conditions in view and endeavor to provide for all the varied circumstances which might be found to exist.

The plan of report was intended to be sufficiently comprehensive and particular to satisfy fully all the requirements of the statute in respect to every common carrier to which it applies, notwithstanding the differences that exist among them. To what extent the result aimed at has been attained, the returns made will furnish the best evidence. It is presumed that some modifications may be found desirable, under the light of experience obtained from the results of this first attempt to establish a system of universal application.

The information called for has been divided into the following topics, which are presented upon different pages of the form:

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|--|---|
| 1. History.                                      | 18. General balance-sheet.                                  |
| 2. Organization.                                 | 19. Financial operations for the year                       |
| 3. Officers.                                     | 20. Important changes during the year.                      |
| 4. Property operated.                            | 21. Contracts, agreements, etc.                             |
| 5. Capital stock.                                | 22. Security for funded debt (page 11).                     |
| 6. Funded debt.                                  | 23. Employees and salaries.                                 |
| 7. Floating debt and current liabilities.        | 24. Passenger, freight and train mileage.                   |
| 8. Permanent improvements for the year.          | 25. Freight-traffic movement (company's material excluded). |
| 9. Cost of road and equipment.                   | 26. Description of equipment.                               |
| 10. Income account.                              | 27. Mileage of road operated. Renewals of rails and ties.   |
| 11. Income account (for roads under lease only). | 28. Consumption of fuel by locomotives. Accidents.          |
| 12. Earnings from operations.                    | 29. Characteristics of road.                                |
| 13. Bonds owned.                                 | 30. Characteristics of road -- continued.                   |
| 14. Stock owned; miscellaneous income            | 31. Oath.   |
| 15. Operating expenses.                          |   |
| 16. Operating expenses--continued.               |   |
| 17. Rentals paid.                                |   |

The various interrogatories under each of the above topics are intended to be self explanatory. It is proper, however, to particularly mention some of the questions raised.

As the inquiries are directed to the entire railroad system of the land, it is obvious at the outset that many details will be found important upon some roads which do not exist upon others, so that some of the inquiries are not necessarily to be answered by all of the lines. This point is more fully elaborated in the Book of Instructions, a copy of which is also annexed.

Upon page 4 of the report a subdivision is made calling (1) for the "name of every railroad the operations of which are included in the revenue account," with a description of the same; and (2) for the "name of all coal, bridge, canal, or other properties, the profit or loss only from which is included in the general balance-sheet." It is intended under the last caption to provide for a general statement of properties owned which are not strictly railroad properties, and the operations of which therefore need not be stated in detail, but which nevertheless aid to produce the general financial result shown upon the ultimate balance of the corporation books.

On page 5, Capital Stock, inquiries appear which are intended to answer the requirements of section 20 of the act in reference to ascertaining amounts paid for capital stock, and the manner of payment for the same. This opens the subject of over-capitalization, or of the watering of stock, so called, which was discussed in the report of the Senate Select Committee on Interstate Commerce. It is believed that cases are now comparatively rare in which the capital stock of our railroad companies, as the same now exists, was actually issued for cash to *bona fide* investors in the same. In many cases roads have been built by the issuance of stock to the contractors or construction companies; frequently by the creation of bonds to an amount nearly or quite sufficient to cover the actual construction cost, the stock issued being in the nature of a *bonus* or profit, or being employed as compensation for services or expenses collaterally attending the construction of the road. In a vast number of instances the



original mortgage bonds have been foreclosed, thus legally extinguishing the title of the original stockholders. In such cases stock has at times been issued by a new corporation organized among the bondholders, and at other times a general re-organization has been effected, under which stock of various classes and priorities has been substituted for pre-existing securities of different grades; frequent consolidations have required the opening of new books upon which former issues of stock are merged in a new form of security; and the foregoing as well as many other methods of substitution in respect to corporate capital are constantly in progress.

The result of this is that most of the carriers now profess to be actually unable to state the amounts paid upon their capital stock or the manner of payment for the same, with any approximation to precision, claiming that these results can only be reached after a critical examination of their books, especially of the books of antecedent companies long since closed, and depending also in many cases upon the knowledge of officers in respect to transactions of the past, many of whom are long since dead. As a matter of book-keeping, capital stock in the ledger account usually stands at its par, and is treated as representing an equivalent amount of cash in the general balance, being placed against the ordinary items of construction or cost of road and equipment to a like amount. Under these circumstances it seems that the question of actual cost of railroad property, or of actual value represented by railroad stock, can only be satisfactorily ascertained by a rigid inquiry in each instance, where the various original books and evidence relating thereto shall be sifted. The subject is recognized as an exceedingly important one, but it is believed that it can only be handled gradually and in detail. Meanwhile the interrogatories referred to, which are prepared in accordance with the requirements of section 20 of the act, are of value as affording a basis for such future investigation as may be found desirable or necessary.

Another line of inquiry required by the act relates to "the cost and value of the carrier's property, franchises and equip-

ment." For the reasons above stated it is found impossible to satisfactorily obtain immediate information which shall show the cost of the railroad property; the corporate books usually showing the cost to be substantially the amount of capitalization effected to reach the present condition of affairs, the cost standing against capital, and the necessities of double-entry book-keeping requiring the preservation of a constant balance. The blanks upon pages 8 and 9 contain inquiries which are intended to elicit the desired information so far as the same can be obtained from the corporate records. It is found, however, that very many roads are unable to give the information asked upon these pages.

In respect to ascertaining the "value of the carrier's property, franchises and equipment," an entirely different question arises. The present value of a railroad property is necessarily very largely matter of opinion only; it depends upon a vast number of contingencies and uncertainties, a road apparently of great value to-day may soon become worthless by the opening of a competing line having superior advantages, or by the competitive struggles of other lines which operate to reduce the income of all; the value of a railroad largely results from the personal characteristics of its officials, the policy pursued by its directors, whether conservative and economical or aggressive and daring, is a great factor in the determination of the current value of the property; a railroad property is not necessarily worth what it would cost to replace it, and, on the other hand, it may be worth very much more than that.

In seeking for lines of inquiry which should tend to answer this demand of the law, certain ways were suggested for approximating a possible estimate of value. A going institution like a railroad, a manufactory, or a bank, is at times valued upon the basis of what it will earn; in other words, the net income from the operation of the property may be considered as affording some criterion of its producing power and some basis of estimating its actual value, providing no change occurs in the situation; under this view the value is measured, in a certain sense, by the net revenue as expended in interest upon bonds and other obligations, and in divi-

dends to stockholders. By comparing the result thus obtained with the earning power of money generally in the community where the road is situated, a rough estimate of the value of the road may be made; but this is found so complicated with expenditures for additional construction, for permanent improvements, for development of the property in various ways, as well as for sinking funds and other fixed payments and in competitive warfare, that the result is far from affording a satisfactory basis of estimation.

Again, it is at times claimed that a property is worth what it will sell for in the open market; or applying this idea to railroads, that they are worth what the equity of redemption will bring when added to the amount required to discharge incumbrances; thus by taking the funded and floating debt of a road, and adding thereto the market value of the shares of stock as bought and sold by the public from day to day, an estimation of the value may be made. This method is pursued in some of the States in endeavoring to ascertain the value of railroad properties for the purpose of taxation.

In view of this claim and the support which this method of ascertaining value has received in some quarters, an interrogatory was inserted on page 5 of the blanks calling for a statement of the market price of shares on June 30, 1888, and also the average market price of the stock during the fiscal year. The answers to this interrogatory, with other information found in the blanks, will enable an estimate of value to be made upon the basis last suggested; nevertheless, it must be admitted that an attempt at valuation founded upon the fluctuations of the stock markets, often affected by manipulations designed either to create fictitious values or to unduly depress actual values for purposes of present gain, is an exceedingly unsatisfactory criterion for determining this important question.

An appraisal might perhaps be resorted to; but who can appraise the value of a franchise? What railroad official would be willing to place an estimated valuation either upon his own property or the property of his neighbor, in view of the ultimate results that might follow in respect to taxation, changes in transportation charges, or fortunes to be made or

lost by dealers in securities? The difficulties surrounding this question are so great, that while the Commission has endeavored to the best of its ability to comply with the provision of the law in question, it will be found impossible to establish any safe basis of determining the result desired from any data which it has as yet been able to procure.

Proceeding with the consideration of the subjects embraced in the blanks, page 6, "Funded debt," will be found to be supplemented by a statement upon page 22, entitled, "Security for funded debt." This last statement is perhaps novel in railroad reports, but its importance and value are obvious. It is found that many corporations have a great number of different securities, for the payment of which they are responsible either directly or by way of guaranty or indirect assumption. Page 22 calls for the enumeration of all these varied obligations, with a statement as to each, showing what road is mortgaged, giving the termini and mileage thereof, what equipment, if any, is mortgaged, what income is mortgaged, or what securities are pledged. Investors in this country, as well as in foreign countries, have constantly complained that they were unable to ascertain with any degree of precision what security existed for the ultimate payment of the obligations issued by our railroad companies. This information is now afforded in an official form, and under the sanction of an oath, so that it will be found possible to estimate the strength of the innumerable corporate bonds and other obligations outstanding, upon the basis of the actual security represented by each, with proper regard to relative priorities between different issues.

On page 7, "Floating debt and current liabilities," it is intended to exhibit the correct balance of floating debt, or of cash assets, as the case may be, upon an actual cash basis, including obligations for wages, traffic balances, supplies, interest and rentals, up to the date of closing the account, and excluding any offset against the same of so-called assets which may not in the ordinary operation of the property be applied to the payment of the floating debt or current liabilities. Materials and supplies on hand are not treated as cash assets for the purposes of this table, it being considered that

they are intended for consumption in the ordinary operation of the property, and are not available for the payment of debts even in case the management of the road should be taken up by its creditors.

The income account, on page 10, is so prepared as to exhibit at a glance the general results of the operation of the railroad property proper, including revenue obtained from securities owned in other companies, and showing the fixed charges, including taxes and rentals, necessary to be deducted before dividends can properly be declared. This table does not vary materially from the form of statement heretofore in use as prepared by the best authorities.

It has been found, however, that a custom has been quite prevalent among carriers of making certain deductions upon their books before stating in figures what are commonly termed "Gross earnings from operation"; in other words, that certain expenditures have been treated as outside the province of their financial reports and have been excluded altogether in their preparation. This has been the case in respect to payments in fact made from the railroad treasury, and operating to diminish traffic receipts, by way of so-called commissions, overcharges, rebates, drawbacks, and otherwise. It has been the hope of the Commission in the preparation of its blanks to put an end to this practice.

In the statement of "Earnings," on page 12, the total receipts from passenger and freight revenue are called for, and a column is provided in the blank for the deduction of all expenditures by way of tickets redeemed, excess fares refunded, overcharges to shippers paid, and other re-payments made of moneys which may be considered never actually to have been the property of the railroad company, although temporarily resting in its hands until returned to the lawful owners thereof. Commissions are treated as an expense of obtaining business and their statement is provided for on page 16 of the blank. And the oath required calls for a statement "that no deductions were made before stating the gross earnings or receipts herein set forth, except those shown in the foregoing accounts and that the accounts and figures contained in the foregoing return embrace all of the

financial operations of said company during the period for which said return is made."

In the statement of "Earnings from operation," page 12, no sub-division of passenger and freight revenue is required, and in this respect the blank is very much more simple than the forms heretofore in ordinary use under the requirements of State commissions and otherwise. The reasons for this change was stated in the circular of January 31, 1888, as follows:

The present distribution is exceedingly unsatisfactory; although the same words are quite universally used they by no means signify the same thing in different parts of the country, or even within the limits of the same State. "Through" and "local" freight are the words most usually employed; sometimes "through," "local," and "joint"; sometimes "local" and "competitive," the latter phraseology having grown rapidly into favor of late in many parts of the country, as particularly adapted to the distinctions observed in the tariff sheets; these distinctions, however, are of a kind which the act to regulate commerce does not directly recognize, and the use of these terms by no means solves the question of what is "through" or "competitive" business. The answers vary as before the adoption of the newer phrase. On the whole the Commission is inclined to abandon the attempted distinction altogether for the present. No highly useful purpose is apparent for its continuance. It is likely to greatly mislead. If in any State or on any road the information given by such a division of the earnings and expenses is desired, the tables, as framed, can be easily enlarged so as to include it.

The classification of operating expenses, pages 15 and 16, presents a subject of the greatest interest to railroad accountants. The distribution into four general classes was determined upon as the most scientific and satisfactory of the various systems in use, while the subordinate heads under each class are so arranged as to require no important change from what is known as "The classification of operating expenses," which was agreed upon by a convention of State commissioners at Saratoga, June 10, 1879, and which has been quite generally adopted in actual use. This Saratoga classification was also published and distributed by the Commission for the information of such accounting departments as had not already adopted the same.

The act requires a statement of "the earnings and receipts from each branch of business and from all sources." This



clearly requires a separation of freight and passenger earnings, and it is believed to be important, also, to apportion expenses between the freight and passenger service. This, however, can not be done with entire accuracy; expenses of maintenance of way and structures and the general expenses of the corporation must be apportioned between the two classes of traffic upon some arbitrary rule, as it is impossible to tell how much, for example, of the wear and tear of the road-bed is attributable to passenger trains and how much to freight trains. Nevertheless, the division can be approximated with reasonable precision, and the separation has been so generally customary that the continuance of the practice involves no hardship.

The rule adopted by the Commission is the one which has been most usually applied, viz: that all expenses which are not naturally chargeable to either traffic should be apportioned on a mileage basis, making the division between freight and passenger traffic in the proportion which the freight and passenger train mileage bears to the total mileage of trains earning revenue. It is quite possible that a more strictly accurate rule may hereafter be ascertained and established, but for the present, and for the purposes sought, it is believed to be sufficiently precise. This explanation is made in view of the fact that certain carriers, in connection with the filing of their returns, have protested that the principle of the division required is not exact. As above shown, it is understood to be in part an estimate, but an estimate which is thought to be reasonably satisfactory until some more accurate basis of division is announced.

Page 19, "Financial operations for the year," furnishes information which is not attainable from the ordinary balance sheet; it calls for a statement of moneys received and expended outside of the ordinary traffic operations of the carrier; for example, by issuing new stock or bonds or other securities, and by the construction of new road, equipment, and betterments; without this information the reports would manifestly be incomplete.

Page 25, "Freight traffic movement," is intended to afford definite information in respect to the movement of the prin-



cipal commodities upon each line, and in the country as a whole. The distribution of the first two columns between freight originating on this road and freight received from connecting roads and other carriers was not expected to be available to any great extent in the returns for the past year. The information obtained by a separate presentation of traffic which originates on each road is of obvious value, both in the aggregate, showing the total amount of each commodity moved in the internal commerce of the country, and in detail, showing the traffic resources of each line, and their relative importance.

No more extended presentation of the considerations which influenced the preparation of the blanks issued appears to be required, beyond the general statement that the plan pursued has in view the accumulation of statistics upon the topics prescribed by the statute, including such matters of detail as are believed to be of serious importance and value, and excluding a vast number of items which have been called for at times, but which are more peculiarly of local than of general interest.

It will be observed that the blanks are not adapted to returns from carriers by water, although by the first section of the act such carriers under certain circumstances are subject to its provisions. The requirements of annual returns from this class of carriers is clear and has not been overlooked by the Commission; but the subject has not been entered upon for lack of sufficient time to properly consider the various questions presented and to prepare proper blanks for the purpose; it opens many questions which are found to be entirely novel and which demand careful attention in their treatment.

The work of compilation of the returns on file and being received, and of deducing such results therefrom as may be of value, has been placed in the hands of the statistician of the Commission, whose preliminary report upon the subject will be found in Appendix H. The organization of his office now embraces a statistician, an assistant, a stenographer, eleven clerks and a messenger.

## AMENDMENTS TO THE ACT.

The Commission in its preceding report expressed the opinion that the law for the regulation of interstate commerce should be permitted to have a growth, and that it would most surely as well as most safely attain a high degree of efficiency and usefulness in that way. A few amendments to the act were nevertheless recommended. It ought, it was believed, to indicate in plain terms whether the express business and all other transportation by the carriers specified in the act should be governed by its provisions. The provision against the sudden raising of rates without notice ought to be clearly made applicable to joint rates as well as to others, and the Commission ought to have authority to bring about something like uniformity in the method of constructing and publishing rates; an amendment upon this subject is now pending before Congress. All these recommendations are respectfully renewed.

Certain other amendments to the law are also urged upon the attention of Congress. The power suddenly to reduce rates without notice of intention to do so is very often exercised in such a manner as to cause annoyance and loss to individuals and to other carriers, and sometimes so that the effect is equivalent to the giving of a rebate. The Commission believes that notice of intention to reduce any rate which any carrier subject to the act makes or joins in ought to be published not less than three days before the reduction should be given effect, as provided in the amendments now pending.

There are provisions in the act as it now stands which would render the carrier, its officers or agents, punishable if by false billing, false classification, false weighing, or false report of weight, or by any other device or means whatsoever, they shall give undue or unreasonable preferences or advantages. The Commission believes that the penal provisions against wrongs of this nature should embrace also the owner of the property or any party acting for the owner or consignor of property who shall be a party to any such unlawful conduct, and it urges the passage of the provisions on the subject contained in the pending bill.

There are many instances in which important lines, in

transporting property from one point in a State to another point in the same State, will pass through another State; as lines from New York to Buffalo pass through New Jersey and Pennsylvania, and lines from Northern Louisiana to New Orleans pass into and out of Mississippi. It is sometimes claimed that a carrier engaged in such transportation is not subject to the act, since the property or persons transported are received for carriage from point to point within the same State, and not from one State to another State. The construction suggested is technical, and is not accepted by the Commission as sound, but a certain plausibility is given to it by the fact that the carriers engaged in transportation from point to point in the United States through a foreign country are expressly made subject to the act, while the same words are not applied to carriers engaged in transportation from point to point in a State, but through another State. The Commission suggests that the question thus raised be settled by express provision.

Another question of construction ought also to be settled by legislation in order to take away the pretense on which certain through lines are now claimed to be local lines in fact and through lines only in appearance. It is well known that many cases exist in which one corporation, either directly or through a trustee, holds the majority or perhaps all the stock of another, and thus controls the other to all intents and purposes, though keeping up a separate organization for the distribution of income among stockholders. The official board and staff of the two in such a case may not be identical; in many cases they are wholly so.

There are also cases in which a corporation created for the purpose of operating existing roads does so through a control of stock in the companies owning them. The claim is understood to be made in some cases, where separate organizations are maintained and no lease given of the subordinate road, that the road is to be considered and treated precisely as though no such ownership or holding of its stock existed, and that a through line is not formed over it in connection with the one owning or holding the stock except when by contract between the two such a line is expressly

created. If the law now sustains this claim, it should, as the Commission thinks, be amended; if a line is in fact a through line by reason of ownership, the corporation controlling it ought not to be at liberty to make through rates or to decline to make them at pleasure.

The act to regulate commerce, in its third section, requires every common carrier subject to its provisions, according to their respective powers, to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith. It is claimed by some carriers, and perhaps the claim represents the prevalent opinion among them on the subject, that while each carrier must afford equal facilities for the interchange of traffic as between competing lines, when it furnishes any, it is at liberty to abstain altogether from entering into joint arrangements with other lines for the exchange of traffic, and that when it shall do so it may remain altogether a local road. Especially is this claim made on behalf of roads whose lines are wholly within the boundaries of a single State. It is said they are purely State roads, and they can not, except at their own option, be compelled to engage in interstate traffic.

As is said elsewhere in this report, however, there are probably very few of the carriers by rail in the country that are not to some extent engaged in interstate commerce, and whether or not such a carrier enters into joint arrangements with other carriers for the purpose is believed to be immaterial to the power of Congress to regulate such interstate traffic as it actually engages in. Probably the act as it now stands in its specification of the carriers to which it is made to apply would not reach the case of a carrier by railroad entirely within a State that did not enter into joint traffic arrangements for interstate traffic, but the specification falls short of the full power of Congress in this regard, and it is believed that it would be quite within that power to make provisions under which all roads engaged in interstate traffic, whether by contract arrangements with other roads or not, would not only be subject to regulation when they make

joint traffic arrangements, but should be required to make such arrangements when the interest of the general public seem to demand it, and that, in case of a failure to agree with other roads upon the terms of arrangement, the Commission should be empowered to prescribe them.

It must also be within the power of Congress when a State road enters into traffic arrangements with another, so as to be, in respect to the traffic covered by it, within the terms of the act, to require it to give, in respect to such traffic, the same reasonable, proper, and equal facilities for the interchange of traffic to other roads that it does to the line with which the arrangement is made. In other words, as the Commission believes, it should not be within the power of what is commonly called a State road, merely because its line does not extend beyond State boundaries, to so limit its participation in interstate commerce as to establish discriminations therein between connecting lines, or between places and persons, as it is now claimed that it may do.

It is the opinion of the Commission that the interest of the public would be subserved by further amending the third section by adding thereto a provision that :

The facilities to be so afforded shall include the due and reasonable receiving, forwarding and delivering by every such common carrier, at the request of any other such common carrier, of through traffic at through rates or fares. If any one of such common carriers shall desire to form a through route for interstate traffic or any class thereof over its own line or any part thereof, in connection with the line or any part of the line of one or more other common carriers, it shall address a request in writing to the other common carrier or carriers, describing therein the proposed route specifically, and naming proposed through rates or fares and divisions thereof for such traffic, and shall deliver such request to such other carrier or carriers, and also transmit a copy thereof to the Commission hereinafter named. If the other common carrier or carriers shall not, within ten days after receiving such request, make and serve and file with the Commission written objections either to the proposed route or to the proposed rates, fares or divisions, the same so far as not objected to shall be deemed agreed to ; but if either the route, the rates, or fares, or the divisions, are objected to, the objections shall be stated in writing and transmitted to the Commission, and the Commission shall then have power to determine whether, having regard to all the circumstances, the route proposed is demanded in the public interest and is a reasonable route for the traffic, and if the Commission shall so find, and the rate or divisions are not assented to, the Commission shall have the further power to prescribe the same ; but the Commission in

any case, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part thereof, as well as any special charges which any such common carrier may have been entitled to make in respect thereof, and it shall not be lawful for the Commission in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route.

The Commission also recommends that the carriers engaged independently in interstate traffic on the rivers, lakes, and other navigable waters of the country be put in respect to the making, publishing and maintaining rates upon the same footing with interstate carriers by rail. It is believed they will be benefited rather than harmed thereby, and that the excuses now made by carriers by rail for great disparities in rates for corresponding transportations between points which are and points which are not affected by water competition would thereby to a large extent be taken away.

The Commission also refers to what is said regarding the transportation of immigrants in another part of this report, in which general legislation on that subject is urgently recommended.

For the purpose of convenient and necessary reference in connection with the foregoing suggestions the Commission has caused to be printed and annexed to this report, marked Appendix A, a copy of the act to regulate commerce, approved February 4, 1887; and also extracts from legislation in the Dominion of Canada and in Great Britain upon cognate subjects, including a copy of the railway and canal traffic act enacted by the English Parliament August 10, 1888, which is to come into operation January 1, 1889.

All of which is respectfully submitted.

Dated, December 1, 1888.

THOMAS M. COOLEY,  
WILLIAM R. MORRISON,  
AUGUSTUS SCHOONMAKER.  
ALDACE F. WALKER,  
WALTER L. BRAGG,

*Interstate Commerce Commissioners.*

## IN THE MATTER OF PASSENGER TARIFFS AND RATE WARS.

Memorandum filed January 25, 1889.

Reduction of passenger rates without consent of connecting lines over which tickets are sold, and without filing schedules thereof with the Commission, *held* to be in violation of section six of the Act to regulate commerce.

A passenger rate war in which rates were repeatedly reduced by several competing lines to an exceedingly low basis on a particular class of traffic, without any filing of tariffs, was contrary to the requirements of law, as well as against the true interest of each party thereto.

Reductions in competitive passenger rates cannot legally be made without at the same time reducing intermediate rates, as required by the fourth section of the Act.

No necessity or compulsion is created by a war of rates which justifies disobedience of the statute.

The employment of ticket brokers and scalpers for the sale of railroad tickets placed in their hands, to be disposed of at reduced rates under the pretence of paying commissions thereon, *held* illegal.

Rates lower than the established tariff are prohibited by law.

Rates obtained from ticket brokers lower than those offered at the regular offices of the company effect unjust discrimination.

The business of ticket brokers and scalpers investigated and described.

Existing methods respecting excursion and mileage tickets considered and found to lead to various abuses.

Recommendations made for amendment of the law.

COOLEY, *Chairman* :

In September, 1888, first-class limited fares from St. Louis to New York City, according to the tariffs on file in the office of this Commission, were, and now are, as follows :

Vandalia Line and Pennsylvania Railroad.....	\$23 50
Bee-Line and New York Central & Hudson River R.R.	22 00
Wabash, Michigan Central and West Shore.....	21 00
Ohio & Mississippi and N. Y., L. E. & W.:.....	20 00
Ohio & Mississippi <i>via</i> Louisville.....	19 00
Chicago & Alton, <i>via</i> N. Y., L. E. & W.....	20 00
Indianapolis & St. Louis, <i>via</i> N. Y., L. E. & W.....	20 00
Wabash, <i>via</i> N. Y., L. E. & W.....	20 00

The considerable differences in these rates are noticeable ; the highest is seen to be 23 per cent. above the lowest. They



are understood to have been made by express or tacit assent of the managers of the respective lines, and it may be assumed that the differences in the price of tickets were expected to equalize the advantages of the respective routes in competing for business, so that each would be likely to secure an equitable proportion of the traffic competed for. The Ohio & Mississippi, having by way of Louisville the most circuitous route, offered to those who would take it the cheapest ticket.

Rates corresponding to these were made from St. Louis to Philadelphia, Baltimore and Washington. A so-called rate war suddenly broke out, in the course of which large reductions in the through rates were repeatedly made. The Commission has given to officials of the leading roads an opportunity for explanation, and the course taken while the war lasted has been described by them as follows.

By one: "An unfortunate controversy with competing lines leading east from St. Louis compelled this company to make daily reductions in the rates named in our joint tariffs now on file in the office of your Honorable Commission. These reductions were made, however, without any arrangements having been entered into with the several other carriers operating lines of railroad east of Indianapolis. It was impossible, under the circumstances, to establish any joint tariffs, and none, therefore, were made.

"Agents at local points between St. Louis and Indianapolis were instructed from day to day to sell tickets from their respective stations to New York and other eastern terminals at the same rates prevailing at the time of sale for tickets to such terminals from East St. Louis; and during this same period our agents at St. Louis and other stations between that city and Indianapolis, where tickets of the proper form were kept for sale, were instructed from day to day to sell tickets to non-competing and all other points situate upon the direct through line, between St. Louis and New York, over which rates less than the joint tariff rates prevailed, and which were east of Indianapolis and west of New York and other eastern terminals, at the same rates or at rates not higher than those prevailing at the time from East St. Louis

to such eastern terminals. The rates from East St. Louis referred to in these instructions were uniformly the prevailing rates from St. Louis, less 25 cents per ticket. The lowest rates at which we sold tickets from St. Louis to eastern terminals referred to were as follows: To New York and Philadelphia, \$10 each; to Baltimore and Washington, \$6.50 each. These prices were reached by almost daily reduction between September 20 and October 8, 1888. So frequent were the changes that it would have been impossible for us to have agreed with our eastern connections upon each change, and filed with your Honorable Commission a joint tariff therefor; nor did we publish or file any local tariffs showing these reduced rates. Our eastern connections honored the tickets sold by us at the rates above mentioned."

The most noticeable feature of this historical statement is the assumption of the writer that because of "an unfortunate controversy" he suddenly found himself in circumstances where he was at liberty to discard all thought of what the law required of him, and all regard for the rights of connecting lines or of ticket buyers, in order that he might take an effective part in the contention. He therefore proceeded to make rates which were not notified to the Commission or to the public in any regular way, to issue tickets for other carriers at rates not assented to by them, and to sell tickets to parties who might, for aught he knew, find them rejected before their journey, begun in reliance upon them, was completed. "It was impossible under the circumstances," we are told, to do otherwise. The writer would have expressed the exact meaning more accurately had he said it was impossible to plunge into the fray in the manner customary in such cases, and at the same time observe the requirements of the law and the rights of ticket purchasers and of connecting lines, and therefore law and right were put aside until the fray was over.

By another it is said: "Rates in several instances were reduced even during one day's sales; besides this, rates were reduced daily for quite a number of days to less than the rates in effect for the preceding day, and that to quite a number of eastern points; the rates from St. Louis to different

points reached figures stated below, viz.: New York, \$6.50; Philadelphia, \$6.75; Baltimore, \$6.50; Washington, \$6.50. Reduced rates were made on account of reductions made by competing lines. As a rule, instructions were given our agents at points east of St. Louis during the period referred to, to make corresponding reductions to points east as were made from our western terminal. There may possibly have been instances where this rule was not fully apprehended, but the general instructions were to follow the line of policy indicated above. The tickets which were issued from St. Louis to any eastern point were good to any intermediate point so that in fact it was not regarded as necessary to give a rate to every intermediate point, though, as a matter of fact our rates were less in most instances to intermediate points than they were to extreme eastern points."

Here is a like assumption of an overruling necessity to that noted above. The writer apparently hopes that the instructions to subordinates which "as a rule" were given, though perhaps not "apprehended" were nevertheless observed, and that the "line of policy indicated" was followed. But whether this was so or not, the one necessity of striking effective blows in the controversy was paramount.

By a third the facts are thus stated: "It is true that during the so-called rate war in which we were forced to become unwilling parties, passenger tickets were sold at reduced and varying rates from St. Louis to New York, and these prices changed daily for some time. I do not understand, however, that rates so made came within the Interstate Commerce Act so as to require us to file copy of the same with the Commission, as no general tariffs were agreed upon, and could not well be, on account of the changes which were too frequent to admit of general agreement."

Here again an imperious necessity is encountered. The writer is "forced to become an unwilling party" to a controversy in the course of which he makes changes in his rates with such rapidity that the law has no opportunity to attach to them its commands. The law must be silent while the fray is on.

: As a matter of fact none of the parties to this "war" gave

any notice to the Commission of any one of these changes, nor did it have from any one of them the least information on the subject until, in consequence of reports of what was going on, a call was made for it.

The regular passenger fare from St. Louis to Indianapolis immediately preceding this war was and now is \$7.50; to Cincinnati, \$10.00; to Louisville, \$8.00; to Chicago, \$7.50. Rates from St. Louis to all points east of those named were and are higher than rates given to New York City and other eastern terminals while the "controversy" was in progress.

It would be interesting to ascertain, if it were possible to do so, what the real cause for this controversy was; what, in other words, it was that created this imperative and overpowering necessity under which for the time the carriers acted. No one of the carriers assumes the responsibility of having begun the reduction of rates; evidently the party who begun it has no reason upon which he is content to stand to assign therefor. No specific act of wrong doing by competitors is named as a reason, and if any one had a grievance it is not known that any attempt was made to obtain redress by peaceful means. It has been intimated to the Commission that hostilities had their origin in a belief on the part of the official who inaugurated them that his line was not getting the proportion of business that was expected when the rates were arranged; a belief that on investigation proved to be unfounded. We have no evidence that this intimation is accurate, but the fact seems to be unquestionable that the ordinary precautionary steps that in other lines of business would be taken before converting a state of amicable rivalry among competitors into a state of destructive warfare, were omitted altogether.

Notice was taken of this subject in the Second Annual Report of the Commission (page 22) as follows:

"Steadiness of rates, then, is an object to be kept in view in the public interest. In a recent passenger-rate war between roads extending east from St. Louis joint rates were in some instances reduced several times in the course of a single day, until they were made absurdly low, the reduction being sometimes made without even waiting for the consent of connecting

roads, so that parties who had purchased tickets would have found them not honored before they reached their destination, and been subjected to great annoyance before redress could be obtained, had the connecting roads declined, as they might have done, to accept the tickets and share the losses. When the general passenger agents had sufficiently subdued their belligerent mood, the rates were suddenly advanced, with the inevitable result that parties who had calculated on the low rates and been enticed from their homes and seduced into taking any action in reliance upon them, found themselves compelled to pay more than they had reason to expect. They doubtless felt something the same sense of being wronged that the people of a neutral territory may be expected to feel when it is overrun by the armies of belligerents."

It is impossible to read the correspondence from which quotations are above made without a conviction that while hostilities were in progress not one of the parties paused to consider whether that which was being done was in conformity with the Act to regulate commerce. It seems quite clear that in several respects the act was violated by some of the carriers and in some particulars by all of them. The tickets in question necessarily all contemplated continuous trips over the lines of connecting carriers, and were issued as entitling purchasers to transportation accordingly. But in some instances if not in all they appear to have been sold without obtaining consent from the connecting lines. Nevertheless if purchasers accepted them as contracts according to the terms on which they were sold, the initial carriers thereby assumed in their dealings with the public to have the right to make them, and took the risk of their patrons being imposed upon in case remote carriers should refuse to honor them. Such a contract for joint transportation involves a joint tariff. Interstate commerce cannot be taken out of the provisions of the act by the assumption that the initial carrier issues contracts without authority. There is at least an implied authority; and actual authority in the present case was shown by the fact that the tickets were honored. Every reduction involved a new joint tariff, and it is therefore seen that the provisions of section six of the Act to regulate commerce which require the filing of joint rates with the Commission were utterly ignored by the carriers. Nor will it escape observation that the reason for ignoring them was that they constituted an impediment to the sudden and

rapid changing of rates which was indulged in while what the parties call the "unfortunate controversy" was pending.

Moreover, although the correspondence exhibits an effort to convey the impression that the provisions of the fourth section of the act were not violated during the period in question, it is difficult for the Commission to accept what is said as proof of an actual belief. This is especially difficult in view of the guarded manner in which one of the writers states his supposition that his rule was observed and his policy carried out. But violations of this section have been distinctly charged. One complaint made to the Commission states facts as follows: The complaining party was aware of the fact that on a day named the recognized rate from St. Louis to New York by one of these roads was six dollars and a half. On the following morning he took the cars for New York at an intermediate station and was charged by the same route sixteen dollars. This would seem to show either that the fourth section of the Act was violated, or that the rates were suddenly advanced without notice. But whichever may have been the case it is perfectly manifest that for the time being the carriers engaged in the controversy paid no attention whatever to the question whether any of the parties concerned, themselves included, were or were not conforming to the law. Apparently they devoted their whole energies to making rates from hour to hour that should at least preserve the relative advantages which had been held by them respectively under the prior arrangement of rates. In other words they disregarded altogether such protection as the law would have afforded, and devoted themselves to methods which they were accustomed to see employed for the redress of violations of similar understandings before the law which should now control them was enacted.

After the parties had thus for a time indulged their belligerent propensities, the rates were again restored by all the competing routes to the figures before prevailing. These rates may for all present purposes be assumed to be reasonable: the carriers had established them, and the Commission is not advised that the public had been complaining of

them. It is fair to conclude that they resulted in satisfactory revenue. The restoration was necessarily matter of agreement, either express or implied, so that in the end after suffering considerable losses, the belligerents came back to exactly the positions in all respects, except as to the losses, which had been occupied by them respectively before the war began.

Assuming that the rates are reasonable, it is pertinent now to ask: What is the significance of such an outbreak, and what good or even plausible reason can be assigned by any of the parties for engaging in it? As usual in such cases each carrier claimed that it was forced to do what it did by the action of competitors, and now relies for a justification of its conduct upon an overruling necessity which took away all free will. The very excuse admits that there must have been at least one offender, but no one admits itself to be the one, or points to another as the guilty party. The conclusion of the carriers thus presented to the public is, that the action of some one not identified absolved all the others from obligation to observe the law.

We cannot admit this conclusion. We cannot agree that even if the facts were as they were assumed to be, the act of one carrier forced upon the others the conduct they indulged in. The compulsion, if there was one, must have arisen from either an open or a secret reduction of the agreed rate: This is supposed to have created the necessity of unhesitatingly meeting the cut rate at all hazards. But from what does any such necessity arise?

It certainly does not arise from any requirement of the Act to regulate commerce. That act does not require one carrier to gauge its rates by those charged by another, but when its rates are reasonable, allows them to be maintained. The necessity, if any, must therefore spring from considerations of business prudence and policy.

What is commonly said on behalf of the carriers in such cases is, that unless the cut rate is met, traffic, which the line making the rate would not under normal conditions obtain, would flow to it, and be permanently lost by others which are better entitled to it. We concede the likelihood that a



temporary loss would be suffered, but that it would be permanent we do not think at all probable.

It is well known that travel has its convenient and its favorite routes, and that it cannot be altogether diverted from these by mere cheapness of rates. The very rates established by the carriers for travel between St. Louis and the Atlantic cities recognized this fact, for, as is shown above, the less desirable routes made considerably lower rates than others. It is also well known that frequently there are exceptional reasons for a traveler taking a particular route, though some other may be cheaper and in general more convenient. It is not to be assumed or believed, therefore, that any cut made by one line could have altogether taken the travel away from the others. But if it did, there would be no reason to suppose the loss would be permanent. Travel is by individual persons, attracted to particular routes by the advantages which at the time are offered; and the effect of a rate which is so low that it is impossible to maintain it, must cease immediately or very soon after it ceases to be given. It is only where the cut rate is not too low to be made profitable by the increased business it may bring that the carriers can expect anything more than a temporary advantage, since it is only under such circumstances that it can be long continued. And in the case under consideration no one pretends that the low rate which was reached could possibly have been long maintained. The cut was obviously a temporary expedient; a war measure to be retreated from when the immediate object was accomplished.

In this case, then, if the several carriers had not met the cut rate, they would for the time being have suffered some loss of passenger traffic; probably the major part of that which was competitive from St. Louis with the line reducing the rate. There are no facts in possession of the Commission which show that they would have lost anything more. How long the cut rate would have been maintained if not met we cannot know, but it is not by any means certain that meeting the rate hastened its withdrawal. If the cut began in misapprehension, the obvious remedy was to remove the misapprehension by friendly conference: to retort with hos-

tile action was more likely to embitter the difficulties than speedily to remove them.

We may go farther, and say that in all cases where arrangements are broken up, under which parties have been competing for business with maintenance of reasonable and steady rates, and when obviously only mutual assent can restore the former relations, ordinary business prudence will dictate that the first step taken should be in the line of an attempt to bring about a better understanding. Unfortunately in these cases instead of being the first step it is very apt to be the last step thought of; the first energies are devoted to the infliction of mutual injuries.

Sometimes these are continued until the parties reach the point of exhaustion; sometimes their folly is made apparent sooner; but in cases like the present, where agreement express or implied at length restores precisely the state of things existing before hostilities began, the intermediate injuries are by the very restoration shown to have been needless, if not positively wanton.

What a competitive line loses by making an unreasonably low rate is not readily computed. In the case before us the losses must have been considerable. These would include first, the direct loss on tickets sold at lower rates; next, the loss suffered from making the rates between intermediate points and the same terminals conform to the requirements of section four of the Act to regulate commerce. On a long line like that between St. Louis and New York the losses on intermediate traffic, if that section were observed, would have considerably more than offset all possible losses that could have come as a consequence of a steady observance of the through rate. But the reductions would not be restricted within the express requirements of section four, for rates must have some regard for relative equality, and the effect upon other classes of tickets than those issued for the competitive traffic might have been very considerable.

Judging from the facts before us, there would seem to be no avoiding the conclusion that the dictates of reasonable prudence were disregarded by every one of the carriers that met the cut rates. The losses from meeting them, if the

other reductions were made which an observance of the Act to regulate commerce would render necessary, must have been much greater than any which would have been at all likely to result from maintaining the previous rate. But this is not all; it was perfectly apparent from the first that the only effectual and permanent remedy that the parties could have for the difficulty which had arisen was to come to a better understanding, and a prudent regard to their own interest would have dictated that the steps taken should have been chosen from their probable tendency to bring it about. Hostile and retaliatory action naturally led in the other direction.

It is not for a moment to be conceded that any one of the carriers involved in this controversy acted under any such compulsion as their agents now bring forward in order to excuse themselves. The imperative necessity under which they claim to have acted was matter of pure assumption. Some one of them voluntarily began to cut the rates, and all the rest hastened to follow the example. Every one could have abstained from doing what he did, and have continued to observe the established rates if he had not chosen to do the contrary. Each one, on a calculation of interest and to the disregard of everything else, decided not to do so. But when he chose to take part in reducing the rates, as he had an unquestionable right to do, there was nothing in reason or in the nature of things to preclude the reductions being made in conformity with the law. All the parties, however, elected the more reckless course. Had the law been observed in the making and filing of joint rates, the process would necessarily have been more slow and deliberate, and the reductions, it may be assumed, would not have been likely to reach the very low figures they finally attained. The disregard of legal requirements was therefore apparently injurious to the carriers as well as illegal, and not one of the agents who took part in this reckless warfare, and while it lasted made everything else yield to the supposed interest of his employer, is now able to show that even when considered from the point of view of selfish interest the action he took was excusable. In any light in which it may be

viewed it deserves to be designated unwise, and as coming under the condemnation, not only of the law, but of selfish policy also.

A still more extraordinary war in passenger rates was found raging in the territory west, northwest and southwest of Chicago at the beginning of December, 1888.

The roads in that section of the country had for several months been disagreeing over freight rates, and there had been such reductions as brought them to very low figures. The reductions were openly made, and called for no intervention on the part of the Commission until the action of the Chicago, St. Paul & Kansas City Railway Co., in reducing the through rates from Chicago to St. Paul below those to intermediate stations, seemed to demand its interference. (See *Matter of Chicago, St. Paul & Kansas City Ry. Co.* 2 Int. C. C. Rep. 231 . For a considerable time there was no change in the passenger tariffs, but it was perhaps inevitable that the difference in respect to freight rates should, with no great delay, extend to passenger rates also. There were besides some special causes for disturbance in the passenger traffic. The Wisconsin Central, which is a less direct line between Chicago and St. Paul than some others, and cannot offer equal inducements to travelers, claimed the privilege of making a somewhat lower rate; in other words, insisted that the other lines should concede to it what is known as a differential; and one or two of the other lines, which are similarly circumstanced, were dissatisfied with their share of the traffic under equal rates, and showed an inclination to make the like claim. The differential was not conceded, and it was soon suspected and charged that one or more of what were considered the weaker lines in the competition for Chicago and St. Paul traffic were secretly cutting the rates. The charge was denied, but the denial was apparently not credited, and measures of retaliation were resorted to which after a time involved all the roads engaged in the passenger traffic between Chicago and St. Paul, Minneapolis, Council Bluffs and Omaha, and also those engaged in the like traffic between Chicago and St. Louis and between Chicago and Kansas City, with the exception of the Illinois Cen-

tral. This last company is not, to the knowledge of the Commission, charged by any one with participation in the discreditable proceedings which for a time took place.

The war between the roads continuing, and no one appearing inclined to invite the intervention of the Commission, two of its members, at the beginning of December, proceeded to Chicago to investigate what was fast becoming a public scandal.

When the Commissioners arrived in Chicago they found that the business of selling tickets for passenger transportation between the cities named was being conducted almost exclusively by ticket brokers who were evidently reaping enormous profits out of it. For the purpose of the sale of tickets the city offices of the several roads, and the general offices also, might almost as well have been closed. The brokers sold the tickets, and they did this in their own discretion for such prices as they could obtain. The evidence was abundant that there was no uniformity in the prices whatever.

This state of things seemed to call for some investigation into the business of these brokers. It was found that there were twenty-three offices kept by them in the city of Chicago and a great many others in other parts of the country. Some of these were handsome offices, prominently located, expensively fitted up and supplied with a force of clerks exceeding that required in the regular city ticket offices of the roads. The proprietors call themselves "ticket brokers," and they repel the appellation of "scalpers," which is very generally applied to them by the public, and sometimes by railroad men. Those in the leading cities of the country have formed themselves into an association and interchange business. One of the Chicago brokers has three offices in that city and interests in offices elsewhere, and the evidence taken by the Commission fairly tended to show that his annual profits must exceed, perhaps considerably, the salary which the people of the United States pay to their President. These great profits are a drain upon the resources of the carriers; and as those resources are wholly derived from the rates and fares levied upon the public for services rendered, it becomes

of the utmost importance to ascertain, if we can, what legitimate reason there can be for this business existing.

The ticket "scalper" as he first makes his appearance in the railroad business appears as a person engaged in imposing upon the public something as evidence of a right to transportation, which is only apparently so, and which will only be used through deceiving the conductor upon the train, or through the conductor's dishonest or careless connivance. Tickets not transferable but which have nevertheless passed from the hands of the person to whom they were issued, tickets limited in time and not made use of until the time has expired, tickets partly used, and not by the conditions of issue capable of further use, are all dealt in by such persons, and it is frequently charged that they are sold by first erasing dates or conditions that show them to have ceased to be operative. This sort of business has always been accounted thoroughly disreputable, and as it could only be made profitable through frauds upon either the carrier or the purchaser of the ticket who often found what he had bought refused on the train the State legislature in some cases interfered and passed laws which were designed to bring the business to an end. The chief difficulty in the way was the fact that there were often valid tickets out which for various reasons were not fully used; such, for example, as a round trip ticket which had been used one way only. Such tickets, if not made non-transferable, had a commercial value, but as the holder might not know of persons desiring to use them, or might not have the time or opportunity to find such persons, he naturally sold to any one who would buy, and the tickets were sufficiently numerous to tempt persons to engage in the purchase and sale as a business. The legislature of Illinois undertook to overcome the difficulty by requiring the railroad companies to redeem the unused part of a ticket by paying for it a sum equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which a portion of said ticket was actually used; but where, as very frequently happened, especially in the case of round trip tickets, the sale was at a considerable reduction from the

regular tariff, the unused portion had a commercial value exceeding the sum the railroad company was required to pay to redeem it. The scalpers therefore continued to buy and to sell, and when they were guilty of no fraud or deception they were either not prosecuted for violations of law, or, if prosecuted, were not convicted, and the law became a dead-letter. How bold these people have at length become in their disregard of right and of law may be seen from the paper, the body of which is here given, which in printed form is sent to persons supposed to have in their possession evidences of a right to transportation. The paper is issued from offices of ticket brokers in Memphis, Tenn., and New Orleans, La., and with the omission of the heading and signature is as follows :

"DEAR SIR:—As our facilities are such that we can handle Editorial Mileage and Passes without risk on your part, on our part, or on the part of the party that is traveling if you desire to sell your Mileage or Pass, by you filling out the blank below, we will give you one and one-half (1½) cents per mile on Passes or Mileage for any number of miles on any Railroad. We never care to buy Passes or Mileage unless the blank below is properly filled out, which is to insure us against risk. When the party we sell to has the blank filled out, he knows just when to present his Pass or Book for Passage. You are aware that most of the Editorial Mileage and Passes expire January 1st, 1889, therefore if you have anything you would like to sell send it in at once. The Passes and Books read "Not Transferable" but you are aware that the Courts have decided that all Railroad Tickets, Passes, and Mileage are good and transferable until used. So you can sell your book with safety, and we can guarantee you no trouble. We refer you to any business house or bank where we are doing business.

" Hoping you will send in your pass and whatever mileage you may have on any railroad, or call upon us personally,

" We remain, very respectfully yours," etc.

The blank which is referred to is as follows :

"Enclosed you will find Mileage Book No. —, on — Railroad, No. of miles —. What conductors are you acquainted with, and on what Division do they run from — to —.

" Address . . . . .

Name .. . . .

Town. . . . .

County . . . . .

State", .. . . .



A very slight inspection of this paper is conclusive of the fact that it contemplates frauds upon the railroad companies, to be accomplished either by deceiving conductors or by their connivance or acquiescence. Passes and mileage tickets are believed to be always made non-transferable, and are, therefore, not salable unless a fraud is intended. But, as one of these brokers told the Commissioners, a new conductor sometimes enforced the restriction and refused to permit any one except the original party to travel upon the ticket; in a little time he ceased to be particular, and the tickets were received from any one.

It might be reasonably inferred that the railroad managers, knowing the disreputable nature of the business such men are engaged in and the injury to their roads therefrom, would endeavor to bring the business to an end, or at least to put such restraints upon it as a reasonable and prudent management of their own business would render practicable. It was found, however, that in the country west and northwest of Chicago the fact was quite otherwise. In some respects the railroad business seemed to be managed with special reference to advancing the interest of these persons as if they were objects of consideration who must be made to prosper whether the roads did or not. In other particulars the methods of the roads, though adopted in supposed advancement of their own interest exclusively, nevertheless tended in the same direction. The statement of a few facts will render this plain.

It has been the practice of many railroad companies instead of paying money for advertising and other printing, to pay, where they could, in mileage tickets. It is not to be supposed they expect that these will all be used by the persons to whom they are issued, and they must, therefore, contemplate their being sold. If sold, they naturally, to some extent at least, would pass to the hands of persons making the purchase and sale a business. Mileage tickets are also largely sold by railroad companies to any one calling for them, and the price put upon them is so much below the price charged for other tickets entitling the holder to a corresponding transportation that a person desiring to take a short

journey by rail may find he can save money by purchasing a thousand-mile ticket and selling it at the end of his journey instead of buying the customary ticket for that journey alone. A mileage ticket issued with a restrictive clause to one person might thus be used for a number of trips by different persons, each one of whom would get his transportation at something less than the regular rate, and in addition one or more brokers would have a small profit out of the ticket also. This misuse of mileage tickets is so easy and the prevention so difficult, that the question seems a pertinent one, whether it is or not unwise for the companies to make so great a difference as they do between the mileage and other tickets, thereby inviting the purchase of the former for fraudulent use. If the mileage tickets as now sold, and now used and abused, can be afforded, a strong presumption arises that with the abuses cut off, a less rate for the ordinary tickets could be accepted without the carriers incurring loss thereby.

Mileage tickets, however, could not by themselves afford a large source of income to ticket brokers. Other exceptional tickets are also used very extensively, and some of these the brokers are able to handle in ways that result in large profits. The carriers west of Chicago appear to do a large business in the issue of what they call excursion tickets. Some of these are tickets to public gatherings, such as agricultural fairs, Grand Army gatherings, religious and political conventions, etc., or they are tickets for students gathered in educational institutions to go home and return when the vacations occur. But the issue of these exceptional tickets is not confined to such gatherings: It seems to be supposed that under the provision in section 22 of the Act to regulate commerce "that nothing in this Act shall apply to the issuance of mileage, excursion, or commutation passenger tickets," the companies are at liberty to issue almost anything which they see fit to designate an excursion ticket, and that in issuing it they are free from the obligation to publish rates, or otherwise observe the requirements of the Act. And having that liberty, investigation seemed to show that they had exercised it on various excuses and on all possible occasions. "Harvest Excursion tickets" have been issued for travel into

sections where important crops were coming to maturity or were being gathered, as have also holiday excursion tickets, and tickets for pleasure excursions of various sorts. When the officers who issued these tickets were asked for their definition of an "excursion ticket," they for the most part answered that it was a ticket issued for a round trip at a reduced rate; but it was sometimes found that they were not even round trip tickets in the ordinary sense, for they were issued for trips about the country, not contemplating a return by the same route. The only characteristic feature of the tickets then seemed to be that they were issued at a reduced rate; and if this fact relieved the carrier from the obligation imposed by the Act, it was easy for it to rid itself, so far as passenger traffic was concerned, from those obligations altogether. But clearly this practice was an abuse, and in some particulars an evasion of the law. It is not believed that Congress ever intended that the words "excursion tickets" in the Act should be given this broad and irresponsible construction.

The surprising fact to be mentioned in this connection is that the railroad companies should be solicitous or even willing to evade the Act in this way, or so greatly to stretch its construction in order to cover doubtful cases. Many of the so-called excursion tickets are issued at one fare for a round trip, and the result of their being offered is that large numbers of people buy the tickets with no thought of making use of them for any such occasion as that for which they are nominally issued, but in order to make use of them as a means of cutting the regular rates. If, for example, an excursion is advertised from Chicago to St. Louis at one fare for the round trip, a resident of St. Louis who happens to be in Chicago, or any party having occasion to pass from Chicago to or through St. Louis, may purchase one of these tickets, use it for his own passage, for which he should have paid the regular rate, and at St. Louis sell it to be used for a passage from St. Louis to Chicago by some one else, who also should have paid the regular rate, and would have done so had not this return ticket been in the market. The road thus loses one fare, and as such tickets at St. Louis would

naturally fall into the hands of brokers, their issue tends to supply this class of people with business. But the evidence showed that the brokers themselves purchase these tickets, in blocks of five or ten, perhaps, at a time, so that during the time they are being sold nominally for a special occasion, and also for an indefinite period afterwards, the regular travel is supplied, not at the ticket offices of the companies, but at the offices of ticket brokers. This class of tickets thus becomes a great demoralizer of rates at all periods; their existence on the market is conceded to be a great evil. Nevertheless railroad managers, instead of taking steps to reduce the evil to a minimum, as they might naturally be expected to do, seem more inclined to multiply excuses for issuing them, and to embrace all possible occasions. Commonly the tickets are issued on conditions which to a large extent would preclude the abuses if the conditions were rigidly enforced, but the great disparity between the excursion and the normal rates would naturally lead to the taking of risks, and would invite falsehood and equivocation to secure the acceptance of the excursion tickets by conductors if strict enforcement of conditions were attempted.

The Commission cannot believe that the railroad companies are consulting their true interest in perpetrating this condition of things. Many of the tickets as has already been intimated, are not believed to be excursion tickets in any proper sense. But if they were properly such, and the right to issue them were undoubted, the duty to provide against the abuses practiced by means of them would seem to be clear. The abuses are seen to be facilitated and increased by the great difference made in price between these and the ordinary tickets, and the question again arises as in the case of mileage tickets whether this difference cannot prudently be reduced, perhaps by some increase on the one side, and a corresponding reduction on the other. At the same time the carriers ought to give thought to the devising of a scheme for the redemption by themselves of the unused portions of tickets. A scheme for that purpose ought certainly to be possible, and if possible ought to be devised and put in force without delay.

But we have not as yet enumerated all the improper sources of income of the ticket brokers. Indeed it is not probable that the large number now prospering on railroad revenues could make a living at all if they were not directly aided by the railroad officials. It seems to be almost a matter of course that when a war of rates begins, regular tickets shall be put in the hands of the brokers to be sold at such cut rate as shall be agreed upon. During the last fall it was well known that the roads leading out of Chicago had done this to a very large extent. The rates were thereby cut between Chicago, St. Louis and Kansas City, and also between Chicago and the cities to the northwest, nearly one-half. The war carried on in part by this means nearly broke up the Western States Passenger Association and by November the roads seemed to be all tending to a condition of exhaustion.

Efforts were made to bring this state of things to an end, and in the last week in November representatives of the roads came together and made under oath a report of the number of tickets thus put into the hands of brokers and still remaining out. The whole number was then found to be about twelve thousand. Quite a number, however, had been recalled from the brokers before the report was made, but how many was not reported and not known. A gentleman having considerable expert knowledge testified that in his opinion the number then out would supply the market about three months. He had made investigation as to the prices at which the tickets had been put into the hands of brokers, and gave the result of his investigation as follows: The tickets reading over lines from Chicago to Council Bluffs would average a rate of \$8.10 as against a tariff rate of \$12.50; those over lines to Minneapolis and St. Paul would average first class \$6.60 as against a tariff rate of \$11.50 and second class \$4.67 as against a tariff rate of \$9.00; those over lines to Kansas City and Atchison would average \$6.42 and \$7.00 respectively as against a tariff rate of \$12.50; and those over lines leading to St. Louis would average \$5.00 as against a tariff rate of \$7.50. Some of the roads "protected themselves" against the action of others—to use a

favorite expression by supplying the brokers from day to day with tickets to be sold at what were believed to be the current rates; in that way escaping being caught with any considerable number out. When that method was adopted, the broker would be allowed as a "commission" a sum measured by the difference between the cut and the tariff rate—which might be two, three or four dollars or more. One company at least put tickets into the hands of brokers to be accounted for weekly, after deducting the allowances. But the allowances were not restricted to brokers; they were made to others who brought purchasers of tickets to the regular offices, and the purchaser by taking a friend along with him could have had no difficulty in obtaining the allowance himself; in other words, in obtaining a rebate.

This was done in the face of the provision of section 6 of the Act, which explicitly provides that when any common carrier shall have established and published its tariff of fares it shall be unlawful for it to "charge, demand, collect or receive from any person or persons a greater or less compensation \* \* \* than is specified in such published schedule of rates, fares and charges as may at any time be in force."

And also it was done in entire disregard of section 2 of the Act, which prohibits unjust discrimination, and defines it as charging to one person a greater or less sum than is charged to another for a like service in the transportation of passengers or property, under substantially similar circumstances and conditions.

In respect to all these remarkable performances one thing can be said to the credit of the railroad agents: they made no attempt to conceal from the Commission what they had done but exposed their folly freely, and in general admitted that it was folly. In one case, but only one, an agent who had testified in part was instructed by counsel not to appear further unless counsel was present to protect him against admissions of criminality. The precaution was wholly needless in his case as the fact was sufficiently brought out in the testimony of others; as it was also again when it became necessary for the principal to resort to legal proceeding in

order to get back from the supposed friendly broker the tickets confided to him.

Of course some legal shield was needed for these dealings with brokers, and it was supposed to be found in the right to pay commissions. One railroad manager in a communication on the subject, addressed to a member of the Commission, expressed views which may perhaps be taken as the same with those held by others. He said:

"In thinking over what was said yesterday afternoon in regard to the passenger situation among the western roads, if I remember rightly, it was tacitly assumed by all that the placing of tickets in the scalpers' hands and paying a commission to them for their sale, was illegal, and I think you gave an explicit opinion to this effect. But on reflection it appears to me that we perhaps arrived at this conclusion too hastily. Is it illegal for any road to remunerate any agency for selling its tickets that it may choose, by paying a commission on each and every ticket sold? If this may be done is there any practical way of putting a limit on the size of the commission? Many things enter into the expenses of maintaining a ticket office, for example the rent of a well situated office in a large city is of necessity high. The office must be kept pleasant and attractive for the public. Courteous and skillful attendance must be secured. All of these things cost money. At their regular ticket offices the railroads pay these expenses themselves, putting their men on a salary, but at the outside offices, of ticket brokers or scalpers as they are called, all these expenses are paid by the proprietor of the office, the railroad reimbursing him once for all by the payment of a commission."

This presentation of excuse has a certain air of plausibility, and one almost feels as he peruses it, that the scalper must somehow be doing the railroad company a great favor by living upon its revenues, and by keeping an office for the exhibition of courteous deportment to the public. We shall certainly make no mistake in assuming that for that part of his business which consists in the sale of tickets which are to be made use of by fraud and trickery, he needs "courteous and skillful attendance" if he is to be successful. Courtesy and skill we can well believe have a marketable value in the offices of this class of persons beyond what they have in most others.

But we discover in this communication what we often meet with when parties are detected in the old abuses: they indulge their passions first, and look about afterwards for some legal pretence which they can plausibly put forward as



a protection. The pretense in this case was a very shallow one. The Commissioners asked several experts, who were brought before them for the purpose of giving evidence, what would be a reasonable commission to allow on the sale of tickets, and not one of them named an allowance exceeding ten per cent. When more than that is allowed, therefore, we must assume that the allowance is made for some other purpose than to make payment for services. Whatever name shall be given to the purpose it is clear that an evasion of the law which requires tickets to be sold at a uniform rate is intended. The broker is expected to sell at less than the regular rate, and he would not make sales unless he did.

The Commissioners also inquired of the experts whether in their opinion if all the companies allowed commissions equally any one of them would receive benefit therefrom, and with one exception they answered No, and that the payment of commissions is unjustifiable. The one exception was a ticket agent who declared that the brokers would push his tickets and not those of other roads even when acting for all, and at the same commission. As this would manifestly be dishonest, we may say that the testimony against commissions was unanimous, and that they constitute an unwarrantable drain upon the corporate resources.

One of the extraordinary facts connected with such rate wars has already been noticed in the preceding part of this paper; namely, that the parties engaged in them know from the first that they cannot continue indefinitely, and must finally be settled on some basis which includes rates mutually accepted or acquiesced in. Nevertheless, the attempt of a friendly understanding is very apt not to be made until after, for a period more or less protracted, the carriers have inflicted mutual injuries. The blows must come first and attempts at reason be made later. In this case the Wisconsin Central was charged with cutting the rates in order to obtain a differential. The charge was denied, the denial was not credited, and other roads instead of causing an investigation to be made, proceeded to cut the rates themselves. Now the cutting of rates would have no value whatever except to show that the differential would not be conceded; and one would

suppose that this determination might be manifest in some way which would be a good deal less destructive. But even if a cutting of rates below what it would be reasonable to charge were found to be necessary, there can be no excuse for a carrier making it a first resort; it should manifestly be resorted to only after other means of redress had been tried and had proved ineffectual.

But what is specially inexcusable, is the enlistment of the ticket brokers and of other outsiders in the war which is thus inaugurated. In all that has been said thus far about ticket brokers, only the most responsible portion of them is spoken of; the portion composing the American Ticket Brokers' Association. These persons, as has been said already, repel the appellation "scalper," and apply it themselves to irresponsible parties whom the Association will not receive as members. Whether this is for any other reason than the want of such pecuniary responsibility as will render it safe to do business with them, the Commission is not advised, nor for the purposes of this paper is it at all important. The fact—which is all we care to mention here—is that besides the brokers who compose the Association, there are also less reputable scalpers and runners who all find their profit in the fray. Why is it that, when the managers can not come to an agreement by themselves, they enlist and subsidise all these parties, and give them standing and strength which enables them to prey upon the roads at other times, instead of calling in the chairman of some of the railroad associations, or some other party mutually trusted and relied upon, or, if a violation of law is supposed to have been committed, bringing it to the notice of the Commission or of the courts, is a question to which no one has attempted an answer. And why especially the roads should engage in the course of action above described, which is at once harmful to themselves and an evasion of the law, when a strict observance of the law in the making and publishing of rates would to a large extent have protected them, is equally unexplained. These are questions which are becoming of vital interest to the stockholders in the roads. The Commission has failed to obtain satisfactory answer to either of them.

It may be said in this case on behalf of the roads which met the supposed cut of the Wisconsin Central, that if the cut had not been met, it would have established in favor of that company the differential demanded. This excuse is plausible, and is perhaps as good an one as can be suggested for such a case. But it does not answer the objection that the cut is made as the first resort instead of the last, as, if made at all, it should be. Nor does it constitute a defense for resorting to the brokers instead of making the cut rate the open and published rate as it should be.

The Commissioners were not informed by any of the warring roads that they were pushed into the struggle by local interests. How such interests may operate to influence carriers engaged in such a warfare may be understood from the following telegram sent and received on December 10th.

" SIOUX CITY, Dec. 10, 1888.

" A. H. HANSON, Illinois Central Railway:

" Reduced passenger rates still continue between Chicago and St. Paul; also between Omaha, Kansas City and Chicago. What is the matter with the Illinois Central? Are you willing to see all favors go to these other cities, and travel and business go to them while Sioux City is neglected? We cannot understand why you stand idly by under these circumstances."

The matter with the Illinois Central was that it was doing exactly what it ought to do when it thus stood "idly by," and declined to take part in a disreputable struggle. It was not responsible for the injury which any town might suffer by reason of the misconduct of others. It is no doubt the case, however, that local appeals like this are sometimes yielded to when they ought not to be. In fact, it requires some considerable firmness to resist them. The Illinois Central is to be commended for its resistance in this instance.

The sale of tickets at reduced rates through brokers while the regular rates are nominally sustained, almost necessarily results in a violation of the spirit, if not of the letter, of the Long and Short Haul Clause of the Act to regulate commerce. For some considerable time it must have been possible to buy tickets from Chicago to Minnesota cities at rates less than the open rates to some of the intermediate stations. If, during that time, there were any purchases of tickets at

the open rates to such intermediate stations, the Act was violated. If there were no such purchases, it must have been because all who had occasion to make use of the tickets knew they could procure the through tickets for a less price, and went to the brokers and procured and used them. But it would be very remarkable if all persons who wanted such tickets were possessed of this knowledge and acted upon it; we may, indeed, fairly consider it incredible. Large classes of people who are steadily employed at regular labor, and who have little time for either reading or gossip, if they had occasion to make a journey would be altogether unlikely to know of these chances to obtain cut rates, and would buy their tickets at the regular offices, thus losing the benefit of the reductions which others, better informed, but also better able to pay, would obtain. This is a common result of rate wars; there is no equalizing the benefits of the reductions while they continue, and the parties who chiefly appropriate them are those having large interests in transportation, and others who habitually are on the lookout for special opportunities and advantages.

Two facts which the managers engaged in these transactions do not seem to have considered it may be well for them to give some attention to.

The first of these is, that by their conduct they are admitting that the price they consent to receive for their tickets from brokers and others is a fair price and a reasonable compensation for their services. If such transactions continue the Commission may feel obliged to take notice of and act upon this admission; and should the open rate be reduced in consequence, the difficulty in getting back to the old rates might be much more serious than it is when the roads make the reductions themselves.

The second is that they are at the same time creating a public opinion and belief that the regular open rates are higher than they ought to be. If the opinion is erroneous but nevertheless results in legislation injurious to the roads, the owners of stocks have their servants who have been put in charge of the roads to thank for it. It may be quite worth the while of the stockholders to consider whether it would

not be wise to insist that these servants shall give more attention to obeying the law and less to contrivances whereby they may evade it. The Act to regulate commerce is, on the whole, conservative and beneficial, and its most rigorous provisions cannot inflict upon the carriers subject to it so much mischief as the managers voluntarily bring upon them by resorting to the old abuses in these rate wars.

In view of the facts above stated, and of facts somewhat similar coming to the attention of the Commission from other parts of the country, the Commission feels constrained to recommend that the Act to regulate commerce be so amended as

*First*, To define what shall be considered excursion and commutation tickets, and to so restrict their issue in interstate commerce as to prevent the abuses now so common.

*Second*, To prohibit all payment of commissions on the sale of tickets for the transportation of persons by railroad in interstate commerce, and all sale of such tickets except by the regular agents of the carriers.

*Third*, To require the carriers to provide for the speedy and convenient redemption of the whole or any parts or coupons of any ticket or tickets which they may have sold, as the purchaser for any reason has not used and does not desire to use, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the proportion of said ticket was actually used.

The Commission also deem it proper in this connection to repeat what it has said in its second annual report, that the provision in the Act to regulate commerce against the sudden raising of rates without notice ought to be clearly made applicable to rates jointly made by two or more carriers, and that notice of intention to reduce any rate which any carrier subject to the Act makes or joins in making, ought to be required to be given a specified number of days before the reduction should have effect.

**WILLIAM P. REND v. CHICAGO AND NORTH-WESTERN RAILWAY COMPANY.**

Submitted October 22, 1888. — Decided January 26, 1889.

Group rates may be properly made from a large number of mines composing a coal mining district extending across the State of Illinois, to points in Western Wisconsin, Minnesota and Dakota, the distance from each part of the group by some route being substantially a fair equivalent of the distance from other parts, and the commercial necessities being substantially the same for all.

The group rate so established is properly extended to coal shipped to the same territory locally from Chicago, no lower rate being possible on account of the operation of the fourth section of the Act, some of the lines passing through the mining district *en route* from Chicago to the points of distribution.

Through rates by way of Chicago to the same territory from mines in the eastern part of the group are necessarily made the same with the group rates established on other routes from the same vicinity, and their discontinuance would simply leave the market open to the product of other Illinois mines at the same transportation charge.

Under the exceptional circumstances requiring such through rates, shippers locally from Chicago of Ohio and Pennsylvania coal cannot justly insist upon rates no higher than the division of such through rate which appertains to the lines running northwest from that city, the circumstances under which the through rate is made being such that it cannot be differently adjusted.

The question of relative injustice must be viewed upon broader grounds than a mere balancing of one rate against another. A reduction which will throw into confusion an adjustment of rates over a large section of country which are not claimed to be unreasonable of themselves, should not be required without a clear right thereto exists under some direct provision of the law.

A reduction of the rates on local shipments from Chicago to the proportion received by the northwestern lines upon the division of the through rates aforesaid, would involve either a general reduction from the entire group under the short haul clause of the law, or an abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all other interests. Under such circumstances the preference is not undue nor is the advantage complained of unreasonable.

*Smith & Pence*, for Complainant.

*W. C. Goudy*, for Defendant.

**REPORT AND OPINION OF THE COMMISSION.**

**WALKER, Commissioner :**

The complainant is a coal dealer who resides at Chicago and owns mines of soft coal in Ohio and Pennsylvania. He

distributes a portion of the coal produced at said mines through Chicago into Wisconsin, Minnesota, and Dakota. Other coal dealers are similarly situated. The product in question is known as Hocking Valley and Pittsburgh coal.

The rate charged on the Hocking Valley coal from the mines to Chicago, about four hundred miles, is two dollars; on the Pittsburgh coal it is from ten to twenty-five cents more. This coal is of a better quality and commands a higher price than coal produced from mines in Illinois; it is also mined somewhat cheaper than Illinois coal; it brings in Chicago from \$3.10 to \$3.35 per ton, while the Illinois coal is sold at from \$1.75 to \$2.00 per ton, or about \$1.35 less than Hocking Valley and Pittsburgh coal.

The lines which carry Ohio and Pennsylvania coal from Chicago to the north-west do not pro-rate or make joint tariffs of any nature thereon with the lines that bring it from the mines to Chicago, but treat the transportation of coal from Chicago as an independent shipment; an exception to this practice exists in shipments to Milwaukee and points between Chicago and Milwaukee, where the rate from Ohio and Pennsylvania is made the same as the rate to Chicago by reason of Lake competition; the Chicago, St. Paul and Kansas City road is also an exception and unites with the Eastern lines in joint tariffs upon soft coal produced from the Ohio and Pennsylvania mines; this road operates a line from Chicago to St. Paul, but with very few if any branches and not reaching a very extensive district of distribution in the territory in question.

The defendant reaches a large number of points in Wisconsin, Minnesota and Dakota, to which it has issued a tariff on soft coal from Chicago; other lines interested in the traffic, by agreement, make the same rates into the same territory; the rate to St. Paul may be taken as an illustration, and is \$1.75 for about four hundred miles. There are several lines besides the defendant which lead from Chicago to St. Paul and other points in the said territory of distribution; one is formed by the Chicago, Burlington and Quincy in connection with the Chicago, Burlington and Northern; another by the Chicago, Rock Island and Pacific in connec-



tion with the Minneapolis and St. Louis; others are the Chicago, Milwaukee & St. Paul, the Wisconsin Central, and the Chicago, St. Paul and Kansas City above mentioned. All accept the traffic of which complainant's business is a representative, and issue tariffs announcing rates therefor. The Burlington and the Rock Island lines start from Chicago in a direction south of west and pass through various coal producing regions in Illinois. In supplying coal to Minnesota, Dakota, Western Wisconsin and Northern Iowa these lines are controlled by the operation of the fourth section or short haul clause of the Act to regulate commerce in this respect, viz: that the rate established on soft coal from Chicago (Ohio and Pennsylvania coal, etc.) cannot be exceeded in the charges which they make to the same points of distribution on Illinois coal which is mined along their lines. For example, if they establish a rate of \$1.75 on soft coal from Chicago to St. Paul, these roads cannot lawfully make any greater rate to the same place from mines at La Salle and other points in Illinois through which they run. The defendant (the Chicago & North-Western Railway) and other lines not similarly situated to the Rock Island and Burlington lines might be able to charge a higher rate on coal from Illinois mines than from Chicago, but as usual the lines which by reason of distance or otherwise make the lowest rate fix the rate for all lines which compete for similar business; the North-Western by a line running southerly from Wisconsin reaches the Illinois coal bed at Spring Valley near La Salle, from which point it makes the same rate of \$1.75 to St. Paul which is made as aforesaid by its competitors from the same district.

After considerable competitive strife during 1887, when rates were made that afforded complainant and other Chicago dealers admission to the territory of distribution in question upon favorable terms, the north-western lines in December of that year came to an agreement in respect to rates on soft coal, in making which the situation as above described was a prominent factor. A common rate was established from Chicago to the territory in question, and the same rate was made from all Illinois coal mines that were situated in the

vicinity of the Rock Island and the Burlington lines, whether reached directly by those roads or by the North-Western and other roads above referred to.

In arriving at this result the Burlington road insisted upon giving the same rate to mines in the vicinity of Streator, situated a short distance south-east of La Salle, and the Illinois Central took the same position in respect to Mionk. It was agreed that Chicago rates should apply on coal mined in the following described territory, all points embraced in which are grouped for the purpose of making rates on soft coal to the territory in question.

"On, north and west of a line drawn along the Chicago and Alton Railroad, Chicago to Dwight, Dwight to Streator and Streator to Lacon; and on, north and west of a line drawn from Lacon to Peoria *via* the Chicago, Rock Island and Pacific; thence along the Central Iowa Railway from Peoria to Farmington; thence *via* the Chicago, Burlington and Quincy Railroad through Canton, Vermont, Bushnell and Monmouth, Illinois, to Burlington, Iowa, including points on the boundary line described; also including points on and north of the line of the Toledo, Peoria and Western, from Canton, Illinois, through Bushnell to Iowa Junction; including also Mionk on the Illinois Central Railroad."

The group so defined embraces a very important coal-producing region in the vicinity of Wilmington, Braidwood and Coal City. This Wilmington district lies from thirty to fifty miles easterly from Streator and La Salle, and a little to the south of the main line of the Chicago, Rock Island and Pacific road. The latter road reaches a portion of the Wilmington field from Seneca *via* the Kankakee and Seneca Railroad; the main portion of this field, however, is served by the Chicago and Alton and the Atchison, Topeka and Santa Fe; principally by the Chicago and Alton, which takes coal there produced to Chicago and delivers it to the Chicago and North-Western for distribution in Wisconsin, Minnesota and Dakota. Upon this traffic the defendant has united with the Chicago and Alton in a joint tariff, the through rate being made the same as the rate from La Salle, Streator and other points in the group; of the \$1.75 rate from the

Wilmington district to St. Paul the Chicago and Alton receives 40 cents and the Chicago and North-Western \$1.35; the result of this division is that while the defendant carries coal produced at the mines in this district through Chicago to St. Paul, on which it receives but \$1.35 as its proportion of the through rate, it charges complainant and others who ship coal mined at the East \$1.75 for the same service from Chicago to the same point. A similar arrangement at first was made in respect to coal mined at Danville and other points in eastern Illinois, and block coal produced in western Indiana, but since February, 1888, joint tariffs through Chicago over the line of the defendant have been restricted to points embraced within the group above described, including Essex and Clark City on the Wabash railroad in the Wilmington field.

This is the discrimination complained of by the petitioner; it is claimed to give an unreasonable advantage to the producers of coal mined in Illinois within the limits of said group, and to work an undue prejudice against the complainant and other miners of Hocking Valley and Pittsburgh coal, in contravention of the first paragraph of section three of the Act to regulate commerce.

The alleged injustice complained of arises from the fact that under the existing arrangement, coal from the eastern portion of the Illinois group reaches the territory of distribution *via* Chicago at a through rate of, for example, \$1.75 to St. Paul, while the Hocking Valley coal pays \$2.00 to Chicago, plus \$1.75, Chicago to St. Paul, making \$3.75 in all; a rate claimed to be substantially prohibitory. The difference in value at Chicago being about \$1.35 or \$1.40 in favor of the eastern coal, it is said that by effecting the discrimination of 40 cents which now exists in the rate from Chicago to St. Paul on coal shipped locally, as compared with the division of the through rate on coal received from the Chicago and Alton road, complainant and other dealers in Ohio and Pennsylvania coal would be able once more to compete in the markets of Wisconsin, Minnesota and Dakota.

Considering the group as a whole, with reference to the territory of distribution here in question, and to the large number of lines of transportation available from the different

Illinois mines to the various sections of said territory, crossing each other at various points, and as a whole forming an interlacing network of connecting and competing roads, there is no geographical reason apparent why the group is not a reasonable one. From each part of it some route exists by which the distance from the mines to the consumer is substantially a fair equivalent of the distance from other points, the general average distance to St. Paul being from 400 to 450 miles. It is said, however, that if this be true as to the coal mining district, there is no propriety in embracing Chicago within the group for the reason that Chicago is not a coal producing point. But the reason why no lower rate can be made from Chicago than from the mines has been explained and appears to be sufficient. It is a necessary result of the application of the fourth section of the law to the geographical situation; if any other basis should be adopted all the schedules would be disarranged. The Rock Island and Burlington roads would either be obliged to abandon their tariffs for the transportation of Hocking Valley, Pittsburgh and other soft coal from Chicago to points upon their respective lines, or to reduce their rates from the Illinois mines. If they adopted the latter course the other roads serving Illinois mines in the same district would be called upon to make like reductions, or otherwise the latter mines would be excluded from the business in question. The only way in which reasonable Illinois rates to the territory in question can be properly constructed and maintained appears to be to include Chicago within the group from which a common rate is made.

It will be observed that in making these rates, soft coal, by the concurrent action of all the lines, is treated as a single commodity; in other words no sub-classification is made having regard to value, as is at times the case in other sections of the country; and to this extent the complainant and his associates are treated liberally, no distinction being made between their product and the much less valuable product of the Illinois mines.

It is obvious that the adjustment desired could be effected in two ways; by increasing the rate upon Illinois coal from

the group referred to, or by reducing the aggregate rate on eastern or other coal.

It is apparent that the rate from a large portion of the Illinois group cannot be raised unless the Burlington and Rock Island lines retire from the Chicago traffic and leave it entirely to other roads; those lines cannot lawfully charge more from the Illinois mines along their roads than they charge from Chicago; and the other roads cannot charge more than do those lines upon coal mined in the same immediate vicinity. There appear to be substantial reasons for including the Wilmington coal field within the group, although situated a few miles south of the Rock Island line; the product is substantially the same as that produced in the vicinity of La Salle, and the course of trade has directed it to the same general market; to establish any substantial discrimination in the rate charged, for example, to St. Paul, against Wilmington, Braidwood and Coal City, as compared with La Salle, Spring Valley, Loceyville and Streator, would be properly regarded as a great injustice in the Wilmington district. This whole region appears to be substantially a single coal field, and established commercial relations would be seriously disturbed by making any material difference in rates from the various points above named. The evidence seems to show that the Wilmington region produces the larger part of the coal mined in this district; in its distribution to the northwest the defendant practically adopts the Chicago and Alton as part of its line, making a through rate which is the same as the through rate charged from Spring Valley, situated a little nearer St. Paul by the direct line than Chicago is; a fact which seems to sufficiently answer the claim of complainant that the rates in question are established for the benefit of individuals interested in the Spring Valley mines; if it was intended to give a preference to the latter mines the same rates certainly would not be made from the Wilmington district for a distance *via* Chicago some fifty or sixty miles greater than from Spring Valley to the same points of distribution. On the other hand, if the defendant was to charge more than \$1.75 from the Spring Valley mines to St. Paul, those mines would be driven from the market by similar coal

produced on the Burlington and Rock Island roads at points situated at even a greater distance from St. Paul, which receive the Chicago rate for the reason above given; and even if the North-Western line were to decline to accept coal from the Wilmington district at the through rate of \$1.75 to St. Paul, a large portion of the same coal, as well as all other Illinois coal mined in the grouped region, would reach the same market at that rate by other channels. It is not obvious how any practical change that might be made by defendant in the rates on coal from the Illinois mines under consideration would benefit the complainant or other miners of eastern coal. The petitioner does not ask that rates on coal from the Illinois mines generally should be raised, and probably would not wish to be understood as taking that position.

If complainant, however, could obtain a through rate from his mines in Ohio and Pennsylvania to St. Paul and other northwestern points at forty cents less than the present rate charged him, the inequality of which he complains would be corrected, so far as an ability to reach the desired market is concerned. But this brings other considerations into view.

Coal is a commodity the market value of which is very largely represented by the transportation charge; the market in question is situated a long distance from the mines; the distance is so great that eastern miners cannot properly expect to be able to lay down their product in the northwestern States at rates not fairly compensatory for the service; the advantage of consumers is of course promoted by enlarging the field of supply and increasing the limits of reasonable competition, but some point must exist at which a product produced at a much greater distance from the market cannot properly be transported upon rates making it competitive with the product of much nearer points. This is exemplified in the fact that Illinois coals at the present time are apparently unable to compete in Michigan with the Hocking Valley and Pittsburgh product.

In order to effect the establishment of a through rate from Hocking Valley to St. Paul less than the present rate of \$2.00 plus \$1.75, the concurrence of the lines east of Chicago is required; a rate of \$3.35 might of course be established by



agreement between the defendant and the eastern lines, to be divided as they should agree. But if jurisdiction exists under the Act to regulate commerce to compel the establishment of a through rate, and the facts are such as to support the claim, the Commission could not order the establishment of such a rate without having before it as parties all the roads composing the proposed line.

Apparently in view of this obvious fact, evidence was given to the effect that the eastern lines, or some of them, desired to unite in such a through rate; this it appeared, however, would be upon the basis that they should continue to receive \$2.00, and that the Chicago and North-Western should reduce its charge from Chicago to St. Paul to \$1.35, the amount which it now receives on division with the Chicago and Alton from the group points above described. The eastern roads are not before the Commission asking for a through rate upon different terms than those now existing. It does not appear that they are willing to accept less than two dollars in the division of any through rate that might be made, although this, estimated upon their mileage, produces a greater rate per ton per mile than the rate of \$1.75 gives the defendant from Chicago to St. Paul; the eastern two-dollar rate yields only five mills per ton per mile, and it must be admitted that the rate of \$1.75 is exceedingly low for the distance from Chicago to St. Paul; a rate of \$1.35 for the same distance can afford very little, if any, profit—certainly none, unless the cars used can be loaded back from the north-west to Chicago; this is said to be frequently done, however, by employing box cars for the service. It also appears that the rates to competitive points, like St. Paul and Minneapolis, are the basis of rates to local points in all directions therefrom, which afford a revenue satisfactory to the carriers although apparently not high for the service performed.

Various considerations have heretofore entered into the making of through rates between railroads; when such rates involve a reduction from the sum obtained by adding together the local charges, carriers have not been inclined to make such contracts unless business reasons exist why the higher



rate cannot be maintained. In the case of the Chicago and Alton through rate in question such a reason is found in the fact that without it a portion of the same coal traffic, as well as much other Illinois coal, would go to the same points by other routes from the same district at the same figure. This reason does not exist in the case of eastern coal, since the lines generally do not take it except at the established Chicago tariff. If there were no mines in Illinois, except those upon the Chicago and Alton railroad, a very different question would be presented. It is the existence of other mines and of other transportation lines that enables the miners in the Wilmington district to obtain a rate which might not otherwise be conceded to them, but which, under the circumstances, they unhesitatingly claim.

Another feature of the situation, which may properly be alluded to in this connection, is this: upon other commodities Chicago merchants have been and are exceedingly jealous of through rates less than the added locals, upon traffic between points east and points west of that city; being apprehensive that any change in the existing system which shall encourage the movement of traffic through or around that city, without stopping there for re-distribution, will work to their serious injury. Chicago traders would regard as a commercial calamity the general establishment of such through rates as are here sought; yet, if conceded by the roads to eastern coal, similar proportionate divisions might possibly be claimed upon eastern shipments of dry goods, groceries and other commodities. Such through rates were common upon long-distance traffic in many parts of the country before the passage of the Act to regulate commerce, and the Commission has held in the Danville and Omaha cases that the law did not make them illegal; but it is for the interest of Chicago as a distributing point that their adoption upon traffic passing through that city should not be pressed.

And the roads themselves have been more than willing to preserve the system of generally routing freight to Chicago and thence again forward to its destination in both directions, practically making a break in the billing at the line

of Chicago and the Junction points in its vicinity; this system enables the lines each side of the division to escape from rate wars and other complications which from time to time arise among the roads on either side of Chicago; and it also makes it possible for the lines on both sides of that city to secure better revenues from the business which they respectively handle. If, therefore, the Chicago and North-Western Co. should be required to give the same terms on soft coal to its eastern connections that it gives to the Chicago and Alton, and if those eastern connections should so demand, it might properly consider the question as a matter of policy whether it would not be better to decline to continue its present arrangement with the Chicago and Alton road. This is precisely the point to which the present application comes. Complainant in his testimony concedes that he is not legally concerned in the rates from La Salle, Streator, Spring Valley, Minouk and other points westerly therefrom in Illinois, except that they should be relatively fair, and he does not attack them. It is the rate from the Wilmington district which he assails, and the legitimate outcome from sustaining his application might be the discontinuance of the present through rate from that field over this line. In other words, what is really asked is a ruling which would put the Wilmington field on the same basis with Hocking Valley and Pittsblough coal; a result which would very probably exclude both to the same extent to which the latter is now excluded, with no benefit to the latter; the other Illinois mines would remain in possession of the territory in question.

Even if this did not appear to be the inevitable result of making such an order as the complainant seeks, yet it does not appear to the Commission that a case is made out under the Act to regulate commerce which requires either that the defendant should be compelled to accept as its division of a through rate on eastern coal the same sum that it receives on Wilmington coal, or which requires defendant to make as its local rate from Chicago the sum which it receives as its division of the Wilmington through rate. The latter rate is altogether exceptional. It is clearly forced upon the defend-

ant as the condition of sharing the traffic of the mines in the Wilmington district. It does not operate to antagonize advantages of geographical position; but it is founded upon the geographical location of the Wilmington mines forming part of the general Illinois coal field, and it enables miners operating in that region, where the rates are fixed by other transportation routes, to have an additional route to a large territory of distribution.

On the other hand, all producers of Hocking Valley and Pittsburgh coal now have like rates from Chicago to the north-west by all the lines, and rates which are not of themselves in any way unreasonable. To compel this defendant to reduce its local rate from Chicago to St. Paul to \$1.35 would involve the other lines in a like reduction, and this in turn would naturally result in a further reduction to the same figure from the Illinois coal fields, a result which would be destructive of the very object that the complainant has in view and would seriously injure the carriers without benefiting the complainant.

The Act to regulate commerce does not require rates to be unreasonably low, nor does it prevent the maintenance of rates that are just and reasonable to the carrier as well as to the shipper. On the contrary the Act implies, first, the establishment of rates which are of themselves reasonable and fair, and next, their maintenance, without discrimination among shippers, and without capricious or arbitrary fluctuations. An exception arises when rates are so constructed that injustice is wrought by reason of their relation to other rates notwithstanding that the rate challenged may not of itself be unreasonable. The question, however, of relative injustice, like other questions arising under the Act, must be viewed upon broader grounds than a mere balancing of one rate against another. The entire field likely to be affected by any proposed change must be kept in view, and if, upon the whole, more injustice and trouble are likely to result from making the change than from declining to make it, the Commission should hesitate to interfere. In other words, when a reduction is demanded which will apparently throw into confusion an adjustment of rates over a large section of

country, which are not claimed to be unreasonable of themselves, and in respect to which any modification upon one line will result in general disturbance and friction among a large number of shippers and carriers of the same product, there should be a clear right to the relief under some direct provision of the law in order to justify the Commission in requiring it. In the present case, so far as can be seen from the testimony presented, such interference would be neither reasonable nor proper. Under the circumstances, the preference complained of is not found to be undue, nor is the advantage given the Wilmington district unreasonable. On the contrary, they cannot well be avoided. It is not made clear in what way any change could be made which would not presently, and by operation of natural and inexorable laws, result in a re-institution of the same advantage upon a reduced basis of income to the carriers. Complainant's difficulty arises from the fact that his mines are not advantageously located to enable him to supply the territory which he wishes to reach. To accomplish his purpose he endeavors to force the carriers into reducing their tolls, upon the ground that they make lower divisions of a through rate from other mines, where the circumstances are such that it cannot be differently adjusted. No order could be properly made that would not leave the defendant at liberty to withdraw its joint tariff on coal from the Wilmington district and thus injure immense interests located on the Chicago and Alton line, and cut off consumers in the northwest from a large field of competitive supply, without affording the slightest benefit to the complainant and others similarly situated.

Since the taking of the proofs the rates have been advanced, the present tariff on soft coal from Chicago and the Illinois mining group to St. Paul being \$2.00, and rates to other points are proportionately higher. No change in the general system of constructing the tariff is observed however, and precisely the same questions are presented under the new schedules as under those which were put in evidence.

The complaint must therefore be held not sustained.

**THE CHAMBER OF COMMERCE OF THE CITY OF  
MILWAUKEE, PLAINTIFF, v. THE FLINT & PERE  
MARQUETTE RAILROAD CO. AND THE DETROIT,  
GRAND HAVEN & MILWAUKEE RAILWAY COM-  
PANY, DEFENDANTS.**

Complaint filed February 21, 1888.—Answer filed March 15, 1888.—Assigned for Hearing April 27, 1888.—Hearing Postponed to June 12, 1888.—Hearing Indefinitely Postponed at Request of Parties June 8, 1888.—Depositions Filed October 3, 1888.—Set for Hearing December 5, 1888, and Heard at that time.—Decided February 19, 1889.

**THROUGH RATES ON WHEAT, FLOUR AND MILL STUFFS FROM NORTHWESTERN  
TO EASTERN POINTS.**

1. The rate of 30½ cents per 100 pounds on wheat, flour and mill stuffs from Minneapolis *via* Milwaukee to New York and common billing points, established by the defendants and their connecting lines, February 1, 1888, was a through rate.
2. The percentage amounting to 25 cents per 100 pounds received by the defendants and their connecting lines east of Milwaukee as their proportion of this through rate on shipments from Minneapolis and points west of Milwaukee and between Milwaukee and Minneapolis, while the defendants charge 25½ cents per 100 pounds on the same class of freight originating at Milwaukee and transported over their lines and connecting lines to eastern points, was not an unjust discrimination against Milwaukee, nor did it injure the business of Milwaukee, nor was it a violation of the Act to regulate commerce, approved February 4, 1887.
3. A rate is none the less a through rate when freight is shipped upon a through bill of lading from the point of origin to destination, accompanied by a waybill showing the route over which it is to pass, with the percentages of all the other lines set forth on the waybill, because the initial carrier charges its local rate as part of the total rate and the remaining lines charge an agreed rate made by percentages.
4. When a combined rate, evidenced by a through bill of lading from the point of origin to destination, has every substantial constituent of a through rate, it is not necessary that it should be formally "quoted" by one of the carriers to another who is engaged in the making of it, in order to constitute it a through rate. Names are nothing in such a transaction; the law looks at the elements and substance of the transaction itself.
5. Through rates, as such, discussed and defined.
6. Through rates, like any other agreements that parties to a contract may make, admit of very great variety in their assumptions; and such rates, when reasonable and fairly stated,

relations to local business, are greatly favored in the law because they furnish cheapened rates and greater facilities to the public, while at the same time they give increased employment and earnings to a larger number of carriers.

7. The difference between proportions of through rates along the same lines should be fairly reasonable in amount and properly guarded in their application, and not such as to injure or suppress business in one locality in order that it may be stimulated and built up in another.
8. Where a rate is in itself a through rate and made up of percentages to an intermediate point on a long haul, the circumstances and conditions of transportation must be rarely exceptional indeed to be of such controlling force as to warrant any considerable excess of such a rate in amount over a percentage of a through rate for an equal distance along the same line by way of the same point to a more distant point.
9. Milling in transit rates as part of a through rate in this case discussed.

*F. L. Gilson, Esq.*, for plaintiff.

*W. S. Webber, Esq.*, for The Flint & Pere Marquette Railway Company.

*E. W. Meddaugh, Esq.*, for The Detroit, Grand Haven & Milwaukee Railway Company.

#### REPORT AND OPINION OF THE COMMISSION.

##### *BRAGG, Commissioner :*

The complaint in this proceeding avers in substance that on or about February 1, 1888, the defendants reduced the rate of freight on flour, grain and mill stuffs  $2\frac{1}{2}$  cents per hundred pounds from Milwaukee to the general eastern domestic markets, to apply on such property when shipped from Minneapolis; that the shippers of Milwaukee have requested and demanded of the above-named railroads that the same reductions be made in rates charged to them as was being made on the Minneapolis shipments, and have been and still are refused such reductions; that this class of property has been and still is being shipped from Minneapolis to Milwaukee on prepaid transit freight, the reductions complained of for the transportation of such property by the said railroad companies being at the rate of 23 cents per hundred pounds from Milwaukee to New York when shipped from Minneapolis, and  $25\frac{1}{2}$  cents on the same class of property when shipped from Milwaukee to New York; that the



rate is 28 cents per hundred pounds from Milwaukee to Boston on freight shipped from Minneapolis, and 30½ cents per hundred pounds on the same class of property when shipped from Milwaukee to Boston; that there is no joint tariff from Minneapolis *via* Milwaukee over the railroads complained of, and that the rate from Minneapolis to Milwaukee is a local and specific rate, and is not a moneyed or mileage percentage of a through rate; and that the property thus shipped is delivered to the railroads east-bound just as free from transportation charges between Minneapolis and Milwaukee, as is the same class of property when delivered to these railroads by shippers of Milwaukee. It is claimed that this is an unjust discrimination against Milwaukee.

In answer to the complaint, the defendants, in substance, state that the rates from Minneapolis to New York and Boston were not made by them, but are through rates from Minneapolis to these eastern cities, and that they accepted as their proportion of these through rates 23 cents per hundred pounds from Milwaukee to New York, and 28 cents per hundred pounds from Milwaukee to Boston for themselves, and their connecting lines east of Milwaukee; that the property mentioned in the complaint was shipped on through bills of lading from Minneapolis to these eastern cities on a through rate; that while the local rate from Milwaukee to these eastern cities was 2½ cents higher than their proportion of the through rate from Minneapolis, as above stated, yet that this is no violation of the statute, and is a difference that can be, and is, justified by them under the circumstances and conditions surrounding the two classes of shipments, and the service performed in transporting them between the different points named.

We have carefully considered all the evidence adduced in support of the complaint and answer, and in the statement we now make, omitting by way of recital such portions of it as are not material to the solution of the questions involved, or are merely cumulative, we find the material facts to be, that during the months of January and February in the year



1888, associated lines of railways were strongly and actively competing with each other for the business of transporting flour, grain and mill stuffs, designated by them as sixth-class freight, from the city of Minneapolis, the largest milling centre in the United States, to New York, Boston, Philadelphia, Baltimore, and other eastern points. These lines were the Chicago, Milwaukee & St. Paul Railway, the Chicago & North-Western Railway, the Chicago, Burlington & Northern Railway, the Wisconsin Central Railway, and the St. Paul, Minneapolis & Sault St. Marie Railway, and their respective connecting lines to eastern points. Prior to December 29, 1887, the rate on this class of freight from Minneapolis to New York and common points was 35 cents per 100 pounds; but on this last-named date the St. Paul, Minneapolis & Sault St. Marie Railway and its connecting lines, commonly known as the "Soo Line," and a new line, published a tariff reducing this rate to  $32\frac{1}{2}$  cents per 100 pounds. About January 28, 1888, the Soo Line made a further reduction of 2 cents per 100 pounds, and then the rate over this line from Minneapolis to New York on this class of freight by that route was  $30\frac{1}{2}$  cents per hundred pounds. A day or two before this last reduction was made by the Soo Line, the Chicago, Burlington & Northern Railway made a rate on this class of freight of  $30\frac{1}{2}$  cents per 100 pounds from Minneapolis to New York.

To meet the foregoing reductions in rates, on February 1, 1888, the Chicago, Milwaukee & St. Paul Railway made rates *via* Milwaukee, and over the defendants' roads and their connecting lines, as follows:

Minneapolis to New York and common points,  $30\frac{1}{2}$  cts. per 100 lbs.

Minneapolis to Boston and common points,  $35\frac{1}{2}$  cts. per 100 lbs.

Minneapolis to Philadelphia and common points,  $28\frac{1}{2}$  cts. per 100 lbs.

Minneapolis to Baltimore and common points,  $27\frac{1}{2}$  cts. per 100 lbs.

And on February 7, 1888, the Chicago & North-Western Railway, to meet the same reductions, made the same rates from Minneapolis to the same points as the Chicago, Milwaukee & St. Paul Railway had done, and *via Milwaukee* over the defendants' roads and their connecting lines. And at the same time, to meet the reductions of the Soo Line, the all-rail routes from Minneapolis *via Chicago* to eastern points reduced their through rate to  $32\frac{1}{2}$  cents per 100 pounds, by the lines east of Chicago, agreeing to receive as their proportion of it 25 cents per 100 pounds to New York; and concerning this reduction the business men of Chicago have made no complaint.

Before and at the time the foregoing reductions were made, the rates on like articles of freight from Milwaukee, the third largest milling centre in the United States, over the Detroit, Grand Haven & Milwaukee Railway, were as follows:

To New York and common points	$25\frac{1}{2}$ cts.	per 100 lbs.
" Boston	"	"
" Philadelphia	"	"
" Baltimore	"	"

The rates from Milwaukee to the same points were the same as those last stated on flour over the Flint & Pere Marquette and its connecting lines, but on grain in bulk the rates over this line were as follows:

Milwaukee to New York	$27\frac{1}{2}$ cts.	per 100 lbs.
" Boston	$32\frac{1}{2}$	"
" Philadelphia	$25\frac{1}{2}$	"
" Baltimore	$24\frac{1}{2}$	"

While the rate was 35 cents per hundred pounds on this class of freight from Minneapolis to New York and common points, this was by shipment all rail from Minneapolis, and the rate was made up as follows:  $7\frac{1}{2}$  cents from Minneapolis to Chicago and  $27\frac{1}{2}$  cents per hundred pounds from Chicago to New York. For rate purposes in regard to this class of freight, Milwaukee and Chicago were treated as common points, upon all rail shipments, whether these were from the

east, or from the west of these cities, but if the shipment was made from Milwaukee across Lake Michigan over defendants' lines, then a lower rate by two cents was allowed by that route than by the all rail shipments. When the reduction was made on sixth class freight from 35 cents per hundred pounds to 30½ cents per hundred pounds from Minneapolis to New York *via* Milwaukee and over the defendants' lines, the rate was then made up as follows:

The proportion of the Chicago, Milwaukee & St. Paul Railway, or of the Chicago & North-Western Railway, or of the Wisconsin Central, as the case might be, from Minneapolis to Milwaukee was 7½ cents per hundred pounds, and the proportion of the rates of the defendants and their connecting lines to New York was 23 cents per hundred pounds. The following table will show how this proportion of 23 cents per hundred pounds was divided between the Flint & Pere Marquette, and its connecting lines, east of Milwaukee by their agreement:

Road.	Per cent.	Proportion in cents.
Flint & Pere Marquette Railway .....	80.58	7.03
Michigan Central Railway.....	23.48	5.41
New York Central & Hudson River Railroad.....	45.94	10.56
	100.00	23.00

For the purposes of comparison the percentages and proportions of the 30½ cent rate per hundred pounds from Minneapolis to New York, based upon actual mileage, *via* roads indicated, would have been, in the absence of any agreement of the lines east of Milwaukee, as to their 23 cent proportion, and the manner in which they agreed to divide this proportion, as follows:

Road.	Mileage.	Per cent.	Proportion in cents.
Chicago, Milwaukee & St. Paul Railway.....	335	24.45	7.46
Flint & Pere Marquette Railway.....	325	23.71	7.23
Michigan Central Railway.....	269	19.65	5.99
New York Central & Hudson River Railroad	441	32.19	9.82
	1370	100.00	30.50

Percentages and proportions of the through rates from Milwaukee east as compared to the local rates of the lines from Milwaukee to New York per 100 lbs. were:

Road.	Local rate.	Proportion of through rates.
Flint & Pere Marquette (Milwaukee to Wayne Junction).....	12 cts.	07.03
Michigan Central (Wayne Junction to Buffalo)	13 "	05.41
N. Y. Central & Hudson River R. R. (Buffalo to New York).....	14 "	10.56
	<hr/> 39 cts.	<hr/> 23.00

The rate of 30½ cents per hundred pounds, above mentioned, from Minneapolis to New York, was so worked that at stations between Minneapolis and Milwaukee where the rate was less than 7½ cents per hundred pounds from such stations to Milwaukee, then the entire through rate from such stations to New York was 28 cents per hundred pounds. On this basis the defendants and their connecting lines would receive of this 28 cent rate, as their proportion, 23 cents per hundred pounds, while the Chicago, Milwaukee & St. Paul Railway would receive 5 cents per hundred pounds. And the following statement will show the rate and percentages received at this rate, namely:

Road.	Rate.	Per cent.
Chicago, Milwaukee & St. Paul.....	05	17.86
Lines east of Milwaukee.....	23	82.14
	<hr/> 28	<hr/> 100.00

The three principal railroads that bring Western freight of this class from Minneapolis *via* Milwaukee for shipment east, are the Chicago, Milwaukee & St. Paul Railway, the Chicago & North-Western Railway and the Wisconsin Central Railway, but the evidence shows that only a small proportion of it is brought by the last named road. The local rate on freight of this class by the Chicago, Milwaukee & St. Paul Railway during the month of February, 1888, from Minneapolis to Milwaukee was 12½ cts. per 100 pounds. The distance *via* the Chicago, Milwaukee & St. Paul Railway from Minneapolis

to Milwaukee is 335 miles; by the Chicago & North-Western Railway, is 364 miles, and by the Wisconsin Central Railway, is 383 miles. The local rates of  $12\frac{1}{2}$  cents and the transit rates of  $7\frac{1}{2}$  cents per 100 lbs. on each of these roads from Minneapolis to Milwaukee during the time that the  $30\frac{1}{2}$  cent rate prevailed in the month of February, 1888, were the same, and the same rule prevailed in the working of this  $30\frac{1}{2}$  cent rate on each of these roads.

Percentage rates as such, in the transportation of this class of freight, obtained only on the lines east of Chicago and Milwaukee, and not on the lines west of these cities. The course of business was for the lines west of Chicago and Milwaukee to charge their transit or local rate, as the case might be, to these cities, to which was added the joint rate of the lines east of Milwaukee or the lines east of Chicago. For eight or ten years prior to February 1st, 1888, the course of business had been for the lines at Minneapolis to issue through bills of lading on sixth class freight *via* Milwaukee and over the defendants' lines to eastern points, the rate from Minneapolis to Milwaukee usually being prepaid by what is known as transit milling rates, and the lines east of Milwaukee charged the joint rate prevailing between them from Milwaukee to such eastern points. Freight destined east over the Flint & Pere Marquette and its connecting lines is re-billed at Ludington, because its officers are there, and over the Detroit, Grand Haven and Milwaukee is re-billed at Grand Haven for the same reason; but in each instance the re-billing is dated at Milwaukee.

When the reduction was made in this rate on February 1st, 1888, to  $30\frac{1}{2}$  cents per hundred pounds from Minneapolis to New York, a through bill of lading was in every case issued showing that the freight was prepaid from Minneapolis or from the point west of Milwaukee from which the freight was shipped, as the case might be, to Milwaukee, and then the proportion of the through rate from Milwaukee to point of destination, and upon the face of all the bills of lading was stamped in printed letters these words: "The rate given in this bill of lading as from Milwaukee is the proportion of the through rate from point of shipment and must not be con-

strued as the rate from Milwaukee proper." The total rate and the proportions of each road appeared upon the manifest of the Flint & Pere Marquette Railway and its connecting lines, with the proportions of each road, which was never the case before that time. The books of the Flint & Pere Marquette Railway showed this in the case of every shipment. Until February 1st, 1888, no through rate from Minneapolis to New York on sixth class *via* Milwaukee and defendants' lines was ever "quoted" to the Flint & Pere Marquette Railway Company and its connecting lines. The rule in regard to transporting freight of this class seems to be that the initial road makes the rate, and the connecting lines accept it, and agree to receive their proportions of it. Under this rule the initial road in transporting such freight from Minneapolis to New York *via* Milwaukee and the defendants' lines would be the Chicago, Milwaukee & St. Paul Railway, or the Chicago & North-Western Railway, or the Wisconsin Central Railway, as the case might be.

The reduction to the 30½ cent rate per hundred pounds from Minneapolis to New York on February 1st, 1888, was made by the lines east of Milwaukee agreeing to take 23 cents per hundred pounds as their proportion of that rate from Minneapolis to New York, and at the same time a like reduction was made by the lines east of Chicago on like shipments from Minneapolis by their agreeing to take 25 cents per hundred pounds from Chicago to New York as their proportion of the St. Paul and Minneapolis rate instead of the former rate of 27½ cents per hundred pounds. The 30½ cent rate from Minneapolis to New York *via* Milwaukee was withdrawn February 12th, 1888, after ten days' notice.

The expense bill in use over the defendants' lines during the period to which this controversy relates, in February, 1888, showed the number of the car, the number of the way bill, the point of shipment and destination, the consignor, number of packages, articles, weight, rate, freight charges, and rate to destination. The waybill during the same period showed the number of the car, from what point shipped, to what destination, consignee, number of packages, description, articles, weight, through rate, line charges, advance



charges, prepaid, unpaid, percentages, total, proportion of line charges to destination. The way bill is made out at point of shipment and accompanies the freight to destination.

Freight of this class billed on through rates from Minneapolis when it reaches Milwaukee or Chicago is re-billed according to directions given at Minneapolis as indicated by the notations on the expense bill. The names of the consignee and consignor appear on the way bills and their initials on the expense bills. After the Soo Route was opened it carried to eastern markets on an average of about three thousand barrels of flour per day during the month of February, 1888, from Minneapolis.

Milling in transit rates exists in a large extent of territory in the transportation of wheat in the Northwest and also in some other portions of the country. By this system wheat and its products are shipped from points West of Minneapolis in Dakota Territory, in the States of Minnesota and Iowa, and also in the Manitoba region, to Minneapolis, or billed through to Milwaukee and Chicago, being common billing points, with the privilege of milling that wheat in transit at Minneapolis. When the receiver of the grain in Minneapolis gets the wheat he pays the whole freight through to Milwaukee, or Chicago, whichever way they happen to bill it. Then there is due him transportation for so many pounds of flour or mill feed, to be forwarded free of any charge from Minneapolis to Milwaukee or Chicago. When the shipper was shipping flour or mill feed from Minneapolis to Milwaukee or Chicago, he would take the certificates showing the transportation to which he was entitled, say, for instance, by the car load, and it would go through to Milwaukee or Chicago, the freight being prepaid by the cancellation of the certificate. In this manner he would finish up the previous contract on that freight, and the railroad would also complete its part of the contract.

After the enactment of the Act to regulate commerce, these certificates were limited to ninety days, and to the millers. The shipper who desired to obtain these certificates would



then have to get a miller to buy them and let the freight be shipped in the miller's name. When the millers and shippers discovered that the railroad companies were going to advance their rate from the summer rate of five cents per hundred pounds, and then to  $7\frac{1}{2}$  cents per hundred pounds, they often bought many millions pounds of these certificates, to be used in the transportation of freight from Minneapolis to Milwaukee or Chicago, so as not to be obliged to pay the  $12\frac{1}{2}$  cent local rate. Prior to the passage of the Act to regulate commerce these milling in transit certificates were good until used, and transferable to any person. A large business is done at Milwaukee as well as at Chicago in freights transported to those cities under these milling in transit rates, as well as upon freight shipped to eastern points *via* those cities.

From Milwaukee, the route across the lake being two cents less than the all rail route *via* Chicago, the bulk of the shipments go that way to the east and the basis of Milwaukee sales are made on shipments across the lake. About 1,214,000 barrels of flour were actually milled at Milwaukee during the year 1887.

The rate on freight originating at Milwaukee as well as on freight originating at Minneapolis or at points west of Milwaukee and between Milwaukee and Minneapolis, and transported by the Detroit, Grand Haven & Milwaukee Railway and its connecting lines, to eastern points is a through rate. The percentage of the Detroit, Grand Haven & Milwaukee Railway is shown by the evidence to be about 29 per cent. of the Milwaukee rate to New York, and about 27 per cent. of the Milwaukee rate to Boston, but the percentage, or rates, of its connecting lines east are not shown by the evidence, nor are they material in the view that we take of this case.

The testimony in this proceeding was taken by depositions of witnesses at Milwaukee before a commissioner selected by the parties, with parties and their counsel present. Some of the witnesses testified that on or about the 28th of January, 1888, the Soo Line made a reduction of the rate from Minneapolis to New York to  $30\frac{1}{2}$  cents, and that a day or two before that time the Chicago, Burlington & Northern Railway Company made a similar reduction. The witnesses were not

required to produce the tariffs by which these reductions were made, nor was any witness required to produce them, so that they might be put in evidence. The statements of the witnesses were accepted that such reductions were made, and there was no testimony in conflict with them in this respect, and so we must accept them in regard to the facts they state; but we find no tariffs filed with us by either of those companies by which any such reductions were made. Doubtless counsel supposed, as they had a right to do, that the tariffs by which these reductions were made by the Soo Line and the Chicago, Burlington & Northern Railway had been filed by these companies with the Commission.

The statute has made it the duty of the carrier under a heavy penalty to file a copy of such tariffs with the Interstate Commerce Commission, and this is one of the most vital and important provisions of the statute. Upon its observance by the carriers depends the integrity of the law, and carriers for their own protection in their own business, are quite as much interested in observing it as are the public, that it should be obeyed. Compliance with it would have saved carriers from many of the silly, reckless and wasteful rate wars in which some of them have engaged to the great injury of the properties they represent, and of the investors, and would also have prevented numerous, and in many instances, well founded complaints on the part of the public. In every stage of its administration the Commission has earnestly endeavored to impress upon the carriers the importance of complying with this provision of the statute, and all our experience has only the more demonstrated that its rigid enforcement is a paramount duty. As the Soo Line and the Chicago, Burlington & Northern Railway Company are not parties to this proceeding, we will make no further remarks upon this aspect of the case at present.

The main question involved in this proceeding is, whether the rate of 30½ cents per hundred pounds on sixth class freight put into effect from Minneapolis to New York *via* Milwaukee by the lines west of Milwaukee and over the lines of the defendants and their connecting lines on February 1st, 1888, was a through rate.

The petitioners contend that it was not a through rate. To support this view of the case it is insisted that there was no joint agreement between the lines east and west of Milwaukee for any such through rate. It is further insisted that the lines west of Milwaukee charged their local rate to that city, and that the freight is there delivered by them to the eastern lines, who re-bill and transport it upon a joint rate of their own to eastern points, and that this demonstrates that this is not a through rate, even although a through bill of lading is issued upon the freight from Minneapolis *via* Milwaukee to New York or Boston, as the case may be, and the freight is re-billed at Grand Haven or Ludington by the eastern lines in accordance with the instructions from Minneapolis found in notations on the expense bills. The fact is also relied upon that the lines east of Milwaukee charge fixed percentages of a joint rate, which percentages are in each instance considerably less than their respective local rates, coupled with the further fact that the connecting line west of Milwaukee does not charge a percentage rate, but charges its local rate, and this is urged as being conclusive evidence that the combined rate made by the two is not a through rate.

The defendants contend that prior to the establishment of the 30½ cent rate from Minneapolis to New York with corresponding and different rates from Minneapolis to Boston, Philadelphia, Baltimore and common billing points with each of these cities, on February 1st, 1888, there was no through rate from Minneapolis to each of these cities and their common billing points, until these rates were made February 1st, 1888, although through bills of lading had for eight or ten years before that time been issued on such freight when shipped from Minneapolis to all these points *via* Milwaukee and over defendants' lines, and their connecting lines. They urge as a fact which seems to be conclusive of this, in their estimation, that no through rate was ever "quoted" to them on such shipments until the rate of February 1st, 1888, was put into effect, and that, therefore, there was no through rate until that time.

Upon the evidence before us in this proceeding we find

ourselves unable to assent to the correctness of either of these grounds as they are assumed by the contending parties. For eight or ten years prior to the first day of February, 1888, the course of business had been for the lines operating between Minneapolis and Milwaukee to issue through bills of lading upon this class of freight to New York, Boston, Philadelphia, Baltimore, and common billing points, with each of these cities *via* Milwaukee, over the defendants' lines, and their connecting lines, to destination. These lines between Minneapolis and Milwaukee, being the initial roads, made this through rate, and the defendants accepted it, and transported the freight upon the through bill of lading to destination. The total of the rate was named in the bill of lading. The initial road charged its local rate, or its milling in transit rate, as the case might be, and the defendants charged their rate from Milwaukee, made up of their locals or agreed percentage rates, as the case might be, to the point of destination. The way bill showed the route the freight was to go to destination. This was the way the business was done prior to February 1st, 1888. According to this course of business the rate from Minneapolis to New York *via* Milwaukee, for example, upon one of these through bills of lading, was made up of the milling in transit rate of the initial road from Minneapolis to Milwaukee, and of the agreed rate of 25½ cents of the defendants and their connecting lines from Milwaukee to New York. By this arrangement the rate from Minneapolis to New York on this class of freight was then 32½ cents per hundred pounds. It was a through rate and had every essential constituent of a through rate.

It was wholly immaterial whether such a rate so made was "quoted" as a through rate or not. The through bills of lading, the fixed total rate, the waybill, the expense bill, the course of business between the parties by which the contract of shipment was performed from the point of origin to destination made it a through rate. Names are nothing in such a transaction. The law looks at the elements and substance of the transaction itself. The through bill of lading issued by the initial carrier, in which it was shown what the rate was, and that the carriers would transport the freight from

Minneapolis to Milwaukee and east to destination, was a contract with the shipper for a through rate. The proposal of the initial carrier was accepted by the defendants and their connecting lines when they took the freight at Milwaukee and transported it to New York upon their agreed rate of 25½ cents per hundred pounds, and it then became an executed contract, and performed according to the well-known and published course of business of these carriers. The shipper had contracted for the through rate, and had received it. It would be a mockery in terms to call such a transaction any other than a through rate.

The reduction in the rate upon this class of freight from Minneapolis to eastern points of February 1, 1888, was made, as we have seen, by the defendants and their connecting lines agreeing to accept 23 cents per hundred pounds as their proportion of this business from Milwaukee east. The rate related to business originating at Minneapolis or at points between Minneapolis and Milwaukee and west of Milwaukee. On shipments originating at Milwaukee and destined to New York over their lines and connecting lines, the defendants left their rate standing at 25½ cents per hundred pounds on this class of freight. Then the initial road between Minneapolis and Milwaukee, in accordance with its published tariffs and as a matter of caution, stamped in printed letters upon the through bill of lading these words: "The rate given in this bill of lading as from Milwaukee" (*i. e.*, 23 cents per hundred pounds) "is the proportion of the through rate from point of shipment, and must not be construed as the rate from Milwaukee proper."

The freight was then re-billed at Ludington or Grand Haven, but dated at Milwaukee, over defendants' roads and their connecting lines, in accordance with their instructions from the point of shipment as found in the notations on the expense bill.

The mistake of the petitioner consists in supposing, that upon such a course of business as is here shown, there was no through rate, because the initial road between Minneapolis or the point of origin of the freight west of Milwaukee



charged its local rate instead of agreeing to receive a percentage of the total rate from the point of origin to the destination of the freight. A rate is none the less a through rate when freight is shipped upon a through bill of lading from the point of origin to destination, accompanied by a waybill, showing the route over which it is to go, with the percentages of all the other lines set forth on the waybill, because the initial carrier charges its local rate as part of the total rate, and the remaining lines charge an agreed rate made by percentages. It may occur where the freight is shipped under a through bill of lading from the point of origin to the final destination, and has to pass over ten or a dozen different lines of railroad, and several of these, or, for that matter, each of these roads may charge its local rate, and still the total rate is a through rate. As through rates are made by the American system of roads, agreed percentages of the total rate, considerably less in amount than the local rates of the respective roads receiving such percentages, are usually a leading feature of such through rates, and it is eminently proper as a general rule that this should be so. This rule is illustrated in the percentages received by the defendants and their connecting lines east of Milwaukee, of the proportion of 23 cents per hundred pounds of the Minneapolis rate, as well as their percentages of the 25½ cents per hundred pound rate on shipments of freight originating at Milwaukee. But, as we have already stated, it is not necessary that this should be so in order to constitute a through rate.

Through rates, like any other agreements that parties competent to contract may make, admit of very great variety in the forms they may assume. In one shape or another, they are in very general use upon the American roads, and in the case of long hauls are one of the necessities of the situation. Commerce and trade require it, and competition compels it. Such rates, when reasonable and fairly adjusted in their relations to local business, are greatly favored in the law, because they furnish cheapened rates and greater facilities to the public, while, at the same time, they give increased employment and earnings to a larger number of carriers.

Upon the facts and the law of this case, the mistake of the defendants consists, as we have already indicated, in supposing that the rates from Minneapolis on through bills of lading *via* Milwaukee over their own and connecting lines to New York and eastern points, were not through rates prior to February 1, 1888, and that they were then made through rates for the first time by stamping on the bill of lading the provision we have mentioned, and by re-billing them at Milwaukee or Ludington, in accordance with those instructions from Minneapolis, or the point of shipment. They were through rates without this, and this method of dealing with them did not make them any more through rates than they were before this was done.

The reduction of rates made by the defendants and their connecting lines west of Milwaukee was forced upon them by the reductions made by the Soo Line and by the Chicago, Burlington & Northern Railway Company. If this reduction had not been made by the defendants and their connecting lines west of Milwaukee, the evidence shows that the result would have been that but little of this class of freight, comparatively speaking, would have gone to eastern points *via* Milwaukee and over the defendants' lines, and the bulk of it would have been appropriated by the Soo Line and by the Chicago, Burlington & Northern Railway. It was under such circumstances that the defendants and their connecting lines made this reduction in rates, and it does not appear to have been one that was unreasonable or capricious. It was not a reduction that was unfair or unjust to Milwaukee any more than the same reduction by the lines east of Chicago from 27½ cents to 25 cents per hundred pounds, as their proportion of the Minneapolis business, was unjust or unfair to Chicago, and neither of these reductions was unfair or unjust to Milwaukee or Chicago. While they were in force, the rate from Minneapolis to New York, for example, on this class of freight *via* Milwaukee and over defendants' lines, was still five cents higher per hundred pounds, than it was on freight originating at Milwaukee and shipped to New York over defendants' lines, and there was no point west of Milwaukee and between Milwaukee



and Minneapolis from which the through rate to New York was less than  $2\frac{1}{2}$  cents per hundred pounds higher than upon freight originating at Milwaukee and shipped east over defendants' lines and their connecting lines. On a car of 28,000 pounds this would make the through rate fourteen dollars per car higher from Minneapolis to New York than on freight originating at Milwaukee, and on such a car the through rate from the nearest point to Milwaukee and west of that city to New York would be seven dollars per car higher than on freight originating at Milwaukee and transported *via* Milwaukee over defendants' lines and their connecting lines to New York. The evidence does not show that this injured the business of Milwaukee in the slightest degree; it related entirely to freight passing through Milwaukee from more distant points which had materially higher rates than on freight originating at Milwaukee to eastern cities. What we have here said as to Milwaukee is true also of Chicago, as to the reduction made by the lines east of that city upon their portion of the through rate on freight from Minneapolis, and points west of Chicago, between Minneapolis and Chicago, destined to eastern points.

In the case of the Detroit Board of Trade *vs.* The Grand Trunk Railway of Canada and the New York Central & Hudson River Railroad Company, 2 I. C. C. Rep., p. 315, we had occasion to consider the relative difference between a through rate at an intermediate, and a far distant point, and the one, as compared to a percentage of the other, for an equal distance. The principle we there announced is applicable here to the extent that upon the manifest and widely different circumstances and conditions of transporting this class of property from Minneapolis to eastern points, as compared with those surrounding the transportation of similar freight from Milwaukee to the same eastern points, the division of the Minneapolis rate at Milwaukee west, so that the proportion of it from Milwaukee to New York, or any other eastern point, should be the same and no less, than the rate upon the same class of freight originating at Mil-

waukee and destined to New York, or such eastern point, is a standard of comparison that cannot be sustained. We did not assert the proposition in that case, nor do we in this, that there may not sometimes be a relation between the two, for there often is such relation. The difference between proportions of through rates along the same lines should be fairly reasonable in amount, and properly guarded in their application, and not such as to injure or suppress business in one locality, in order that it may be stimulated and built up in another. Where a rate is in itself a through rate and made up of percentages to an intermediate point, like Milwaukee, or Detroit, for example, and upon a long haul, the circumstances and conditions of transportation must be rarely exceptional indeed to be of such controlling force as to warrant any considerable excess of such a rate in amount over a percentage of a through rate, for an equal distance along the same line, by way of the same point, to a more distant point. The doctrine of relatively fair rates to different localities is one that we have frequently asserted. The difference at Milwaukee, however, of  $2\frac{1}{2}$  cents per hundred pounds as a proportion of the through rate from Minneapolis to eastern points, as compared with shipments of the same class of freight originating at Milwaukee and destined to eastern points, was not one, upon all the facts of this case, which we regard as unreasonable in amount or calculated to injure the business at Milwaukee, that it may be stimulated and built up at Minneapolis. Nor can a corresponding difference between other points according to distance, situated between Milwaukee and Minneapolis, have any such effect, when these rates are still considerably higher than the through rate charged upon freight originating at Milwaukee and destined to eastern points. Besides, these are all very long hauls, in addition to being controlled by circumstances and conditions of transportation which are widely dissimilar.

No complaint is made of milling-in-transit rates in this proceeding, and we can well understand why this should be so, for Milwaukee is, in proportion to the immense grain and flour business it does, quite as much interested in

obtaining grain under the rates resulting from this system as Minneapolis. In the view we take of the case it is wholly immaterial that the freight rates from Minneapolis to Milwaukee and from points west of Milwaukee were prepaid to Milwaukee by the milling-in-transit rates, because they were in every such instance part of a through rate. In this respect it does not appear that they were the means of violating the law. They were the known and prevailing rates in regard to this class of business. They were treated by the parties as the basis of the through rate. Every shipper knew that these were the rates which were used in transporting this class of freight to Milwaukee from Minneapolis and points west of Milwaukee, for shipment via Milwaukee and defendants' lines to eastern points as the basis of the through rate; and that the local rate of 12½ cents per hundred pounds on this class of freight from Minneapolis to Milwaukee was not, and could not be used, as part of this through rate of February 1st, 1888. They were in fact very moderate rates, being much the same in amount, according to actual distance, as the percentages of agreed rates over defendants' lines, and their connecting lines. No shipper has complained that he was unable to obtain these rates while other shippers were receiving them.

It results from the conclusion we have reached that the petition in this proceeding cannot be sustained, and it is therefore dismissed.

MILTON L. MYERS, SURVIVOR OF HOSTETTER & COMPANY,  
v. THE PENNSYLVANIA COMPANY, OPERATING THE  
PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY; THE  
BALTIMORE & OHIO RAILROAD COMPANY; THE  
LAKE SHORE & MICHIGAN SOUTHERN RAIL-  
WAY COMPANY; THE PITTSBURGH & LAKE  
ERIE RAILROAD COMPANY; THE NEW YORK  
CENTRAL & HUDSON RIVER RAILROAD COM-  
PANY; THE ALLEGHENY VALLEY RAILROAD  
COMPANY; AND THE PENNSYLVANIA RAILROAD  
COMPANY.

Hearing at Washington, January 10, 1889, on Depositions and Oral Testi-  
mony. — Decision, February 23, 1889.

Hostetter's Stomach Bitters, prior to the Act to regulate commerce, were  
shipped under the Middle and Western States Classification in the third  
class in less than car loads, and in the fourth class in car loads.

Bitters generally in that classification were classed in first class in less than  
car loads, but were also put in the third class, with the specification  
"Manufacturer's Account, released by shipper," under which these  
bitters were shipped. No other article, except wine, was so classified  
and shipped.

After the Act to regulate commerce, the Official Trunk Line Classification  
superseded the former classification, and Bitters were classified in first  
class, with other liquids similar in character, marketable value and  
manner of shipment. The class rates under the Official Classification  
are lower than under the one previously used.

In October, 1888, by a change in the Official Classification, Bitters in car  
loads were placed in third class.

On complaint for unjust and unreasonable rates, *Held*, that a former special  
and preferred rate is not a fair test of the reasonableness of a present rate.

The proper classification of an article is to be judged relatively by the clas-  
sification of other articles similar in character, quality, and conditions  
of transportation.

The rate on Bitters as at present classified, compared with analogous arti-  
cles, is not so unreasonable as to demand a change of the classification  
of that particular article. The propriety and extent of a change can  
more appropriately be acted upon in connection with other articles, in a  
general revision of the classification.

*A. H. Clarke and James Watson*, for Petitioners.

*Hugh L. Bond, Jr.*, for B. & O. R. R. Co.

*J. H. Reed*, for P. & L. E. R. R. Co.

*J. T. Brooks*, for Penn. Co., Penn. R. R. Co., and N. Y. C.  
& H. R. R. R. Co.

## REPORT AND OPINION OF THE COMMISSION.

*SCHOONMAKER, Commissioner:*

The complaint charges unreasonable and unjust transportation rates upon property shipped over the lines of the defendants from Pittsburgh, Pennsylvania, to different places in the United States. It sets forth that the petitioners are engaged in the manufacture and sale of a proprietary medicine known as Hostetter's Stomach Bitters, and that they and their predecessors have carried on the business at Pittsburgh for thirty years. It also states that prior to April 5, 1887, in the classification then used, the bitters were rated fourth class in car loads and third class in less than car loads, but that by the classification in force since April 5, 1887, they were placed in first class both in car loads and less than car loads, and that by such classification the rates have been advanced to an unfair and unreasonable extent. Illustrations are given of the advances: for example, to Chicago, from 25 cents per hundred to 42½ cents; to St. Louis, from 38 cents to 58½ cents; to San Francisco, from 83 cents to \$1.60; to New Orleans, from 60 cents to \$1.05.

The advances in rates are alleged to be excessive, unjust and unreasonable, and to be in contravention of the first, second and third sections of the Act to regulate commerce.

The answers of the several defendants set forth matters intended to justify the classification and rates complained of.

The material facts are as follows: The shipments of the stomach bitters by petitioners aggregate annually from seventy-five to eighty-five thousand boxes. The boxes are of uniform size and weight, and contain twelve bottles of bitters securely packed, each bottle containing a pint and a half. A box of the bitters weighs about thirty-five pounds. A car load consists of about seven hundred boxes, weighing twenty-four thousand five hundred pounds. When shipped in less than car loads they are sent in lots of fifty boxes or over. The bitters are compounded of about eighty per cent. of cologne spirits or high wines, reduced with water and with ingredients of roots, Peruvian bark, etc., for which the formula is a secret.

The cost of a box of bitters, including the manufacture, advertising and all the incidents of the business, is about six dollars or less, and it is sold to dealers at seven dollars and a half a box, transportation charges paid. The retail price is one dollar a bottle.

The business is prosperous, increasing yearly, and large profits are realized.

Prior to April 5, 1887, railroads in the territory in question worked under three different classifications. One was known as a local classification that governed the traffic between local stations; another as the Middle and Western States Classification, under which the bitters of Hostetter & Company were shipped; the third was a through classification that governed business from Chicago to the seaboard. In the classification that covered the bitters of Hostetter & Company they were shipped in the third class in less than car loads, and in the fourth class in car loads, and under written agreements between the shippers and the different roads, renewed annually, the goods were carried entirely at the owners' risk, the companies being released from claims for damages from the casualties of carriage and from shortage and pilfering.

When the Act to regulate commerce was passed the carriers found that uniform classification was necessary both for through and local business. The Official Trunk Line Classification, prepared for the new conditions under the Act, with a less number of classes and applying to both east and west-bound carriage, was accepted by all the roads that are parties to this proceeding, and superseded the former classifications, with their more numerous classes, that had been used. The goods of petitioners have since been carried under the Official Classification wherever that governed. Under this classification the bitters were placed in the first class, both in car loads and less than car loads, and if taken at carrier's risk in less than car loads, in double first class. This change in classification increased the rates, particularly on western and southwestern shipments.

Changes have been made in the Official Classification from time to time, and by changes that took effect October



18, 1888, the stomach bitters were placed in third class in car loads and first class in less than car loads. A material reduction in car load rates followed this change of classification. The rates under the Official Classification are lower than they were on like numbered classes in other classifications before the Act to regulate commerce. The first-class rates to certain points are now lower than the second-class rates before that Act. At some terminal points the charges are higher. As illustrations, the rate to Buffalo, which was 23 cents per hundred pounds before the Act in less than car loads, is now 30 cents—an increase of seven cents produced by the necessity of conformity to the fourth section; while to all points east of Buffalo, including Boston, all Boston points and New York and Philadelphia, the rate is considerably lower. The rate to Boston prior to April, 1887, was 70 cents per hundred on less than fifty boxes, 61 cents on fifty case lots or more, less than car loads. The less than car-load rate now is 51 cents per hundred. To New York the rate was 51 cents per hundred on fifty-case lots; now 41 cents.

The car-load rates to Buffalo now are 20 cents per hundred; to New York 30 cents per hundred, being five cents less than before the law. To Boston the rate was 40 cents in car loads, now 33 cents. The rates on third class under the Official Classification, in which bitters in car loads are placed, are three cents per hundred lower than before the Act. Since October 18, 1888, when a change was made in the Official Classification and car-load rates made for bitters, the rates from Pittsburgh to the principal points of shipment have been as follows:

To—	Less than car loads.	Car loads.
Chicago,.....	\$0 42½	\$0 27½
New Orleans.....	1 05	73
New York.....	45	30
Boston.....	51	33
Philadelphia.....	39	28
San Francisco, Cal., and Portland, Ore., till January 1, 1889.....	3 00	1 40
Since January 1, 1889.....	3 10	1 60



Shipments to Dallas, Texas, and other common points in Texas prior to October 15, 1888, were governed by the Joint Texas Classification, which classed bitters in glass, owner's risk of breakage, less than car loads, first class, \$1.50; car loads, fourth class, 93 cents. On October 15, 1888, the Western Classification as adjusted to Texas traffic was adopted, which classes bitters in glass or wood, owner's risk, first class for any quantity, rate \$1.50 per hundred pounds. January 20, 1889, the first class rate was advanced to \$1.63 per hundred pounds for any quantity. These rates are not controlled by the Official Classification.

The car-load shipments heretofore have been made to only a few points—San Francisco, California; Portland, Oregon; and Galveston, Texas, less than car-load shipments to the principal cities at the West and Southwest.

Before the Act bitters generally were in first class, but had also another classification in the third class, specified as follows: "Manufacturer's account released by shipper," under which these bitters were carried at the lower rates of that class. Since the law they have been classed with other analogous articles and take like rates. Some of these, contained in glass, boxed, are: Acids, apple and fruit butter, jelly, or sauce; shoe blacking; bromine; catsup; chow-chow; cider; coffee, condensed; disinfecting liquids; drugs and medicines; glycerine; honey; ink; liquors or liquids, wines; milk food; mustard; oils; paints; pickles; prunes; snuffs; stereotype plates, boxed; syrups; and many others. The bitters are regarded by the railroads as desirable freight, and are conveniently handled, but their transportation is attended with some risks from pilferers, who open the boxes and remove bottles.

The statement of facts discloses the case so fully and points so clearly to the conclusion necessary that little need be added by way of discussion. It is manifest from all the testimony that the manufacturers of the stomach bitters prior to the Act to regulate commerce were accorded exceptional transportation advantages. The favorable rates had little, if any, relation to the marketable value of the property, or to the charges for carrying analogous articles. They were part

of the former railroad practices of affording special advantages to favored shippers, based upon no principle whatever, and in violation of their duty to the public to apportion their charges justly and with fair regard to the value of the service.

The same favoritism and lack of consistency also allowed a less charge for longer than for shorter distances, and gave to certain favored towns undue preferences over others entitled on just principles to equal or better rates. Since the Act these practices have been no longer possible without risks of prosecution and penal consequences. In the new adjustments made necessary by the Act, the commodity shipped by the petitioners being similar for transportation purposes to many others, and no adequate reason existing for giving it a class and rate of its own, was very properly classed with other things similar in commercial value, and in the character of the service required of the carrier.

The complainants insist that the evidence does not warrant a finding that the stomach bitters previous to the Act had a classification and rate that were special and lower than analogous articles, and testimony is cited to the effect that no rebates were asked for or received, that the shippers were never asked to pay any higher rate, and that the freight was sought after by the carriers at the rates then charged. This testimony is not at all inconsistent with the hypothesis that a favored rate was in fact accorded to these bitters. Whether or not the rate was preferential, and in that sense special, depends upon the character of the article, the manner in which it was shipped, and the classification of commodities similar in character and mode of shipment. If it had a classification distinct from property similar in these respects it had an advantage not founded on consistent principles of classification, but on considerations special in their nature that might have involved favor.

The Middle and Western States Classification, under which the article was shipped prior to April, 1887, shows that it was classified as follows: Bitters in glass, manufacturer's account, released by shipper, class three. This did not apply to a variety of other articles, such as acids in carboys, apple

or fruit butter in glass or stone, bromine, drugs and medicines, embalming fluids, extract of bark, glycerine in glass or tin, liquors, wines, high wines, and oils in glass, cans or jugs, packed in boxes, &c., which were all embraced in first class at owner's risk. Bitters in glass, owner's risk, without the specification "manufacturer's account, released by shipper," were also in first class. The distinguishing feature, therefore, of the special classification of the bitters in question was the addendum "manufacturer's account." This classification was also applied to wine in cases, but to nothing else to which attention has been called. Wine, like bitters, without this specification was in first class. Whatever reasons may have induced this mode of classification, the effect was to afford color for a reduced charge. Several other articles that are now in the first class had various lower classifications for which the reasons are not apparent.

Complainants also refer to opinions at one time expressed by traffic agents of some of the defendants as to the reasonableness of the old classification, and to the grounds specified by these agents for the change made. These opinions are to be weighed in connection with the facts on which they are based, and the reasons stated by witnesses for an act for which they are not responsible may be inadequate without impairing the propriety of the act. So far as traffic agents may impute an increase of rates to the law in any other sense than as a result of the removal of preferences and the requirement of equality of charges for like service in respect to like traffic, the imputation is incorrect, if not disingenuous. The law requires no increase of rates, but only equality under like conditions so that one shipper shall not have advantages at the expense of another. Obviously the elimination of rebates and preferences to favored individuals or localities, and the payment by all shippers of like charges for like service, would seem to warrant cheaper service for the public at large without loss of revenue to the carriers.

In the reformed classifications prepared to meet the requirements of the law, some mistakes doubtless were made in the difficult task of properly arranging traffic consisting of a very great number of commodities, some differing widely

and some slightly in character, in a few general classes. Quite clearly it was error not to give a car-load rate to the bitters in the first instance. That, however, has been corrected. The double first-class rate at first applied was also unreasonably high. If the case rested on the classification and rates in existence when the petition was filed, the complaint would probably have sufficient foundation to be sustained. But the changes made on the 18th of October, and in force since, have removed the substantial grounds of complaint. The petitioners, however, still insist that the present rates are unreasonable on west-bound and southwestern shipments. The rates on east-bound shipments, being confessedly less than they were prior to the Act, are not in question.

The western and southwestern car-load rates since October 18th, 1888, so far as the Official Classification governs, leave little, if any, cause for comment. They are only a small advance above the favored special rates before the law was in force, and resulted from the effort to combine and harmonize in one uniform classification several different ones, on some of which class rates were higher.

It is said, however, that car-load shipments are made to only few and far distant points—San Francisco, California; Portland, Oregon; and Galveston, Texas—and to all other places in less than car-loads, so that the car-load rates are of no benefit to the petitioners. Their shipments are stated to be as a rule in lots of fifty boxes and over. No explanation was given why the goods are not shipped in car-loads to large cities like Chicago, St. Paul, Kansas City, Omaha and many others to which frequent shipments are made. With a car-load rate open to the petitioners it would seem feasible and desirable to avail themselves of that mode if the difference in rates is deemed of material importance.

The principal contention is in respect to rates on less than car-loads. The main, if not the only, ground on which they are assailed, is that they are higher than the old rates accepted before the Act took effect, and which have been described. Larger sums in the aggregate have been paid by the manufacturers for the transportation of their commodity than

under the former special rate, and the inference drawn is that the present rates are unreasonable and oppressive. That such an impression should exist is not, perhaps, unnatural. It is one of the fruits of the irregular practices antecedent to the law, which often led shippers to believe that special transportation privileges were legitimate, and that what was conceded as a favor became thereafter matter of right. In many instances when shippers or localities have complained of the action of carriers under the law, it has been found that the complaints have arisen from the necessary and intended effect of the law in the suppression of unjust preferences and other abuses, and the equalization of charges under conditions substantially equal.

When the reasonableness of rates is questioned, therefore, the complaint should be based on other grounds than a former preferential rate, a cut rate, or any merely abnormal practice. The prohibition of rebates and of unjust discriminations and preferences has resulted in some instances in increased charges to individual shippers, or on some particular traffic, but if such advances are only caused by the discontinuance of abuses and bear proper relation to the charges on other traffic and to the conditions of transportation, no injustice is done.

The case of the petitioners is within the application of this principle. The classification of the stomach bitters in less than car-loads has been raised to first class for the reason that, all things considered, it properly belongs in that class, which includes a variety of similar articles, and because a lower classification without sufficient reasons to justify it would be an undue preference, and in violation of the law.

By this classification it takes the rates of the other kinds of property in the class. These consist largely of articles in glass packed like the bitters in boxes for transportation. Among them are acids, apple or fruit butter, bromine, cider, coffee condensed, drugs and medicines, honey, ink, liquors or liquids, milk food, oils, paints, pickles, prunes, syrup, and a variety of others. There is no apparent injustice in classifying the bitters with such articles. And a rate that is reasonable for the class is reasonable for an article properly

included in the class. The petitioners suffer no injustice, therefore, peculiar to themselves, from the classification of their goods. If the classification of their bitters should be changed the same reasons would compel a like change of a large number of similar articles. No question of that character is now presented. The question is simply whether the stomach bitters should be taken from the class in which it is placed, and given a lower class.

To reduce stomach bitters in less than car-load lots from the first class under the Official Classification, would be to take them from the position among analogous articles which they now occupy. The second class contains almost no articles that are liquids, or with which stomach bitters can fairly claim to be associated. The general question in respect to the entire list of articles above enumerated, of whether the difference between car-load and less than car-load classification is or is not too great, is one which can not properly be passed upon without a much broader consideration of the subject than the facts respecting a single article can present.

The subject of the difference between car-loads and less than car-loads under the Official Classification has been extensively investigated and elaborately discussed in another case under consideration by the Commission awaiting decision, in which the general question can more appropriately be dealt with and the principles indicated that should be regarded in class distinctions. It is better that the margin of difference between car-loads and less than car-loads in respect to a single article should be reserved until the matter can be disposed of in a collective sense.

The conclusion of the Commission is that a change in the classification of the bitters should not now be ordered. The first class in the Official Classification is in fact more favorable to the shipper than the second class was in the classification under which it was formerly shipped. The testimony does not now show that the business of the petitioners has been injured. While the amount of freight charges paid is greater the profits of the business have also largely increased.

If it were necessary to make an order respecting the clas-

sification in force when the petition was filed, sufficient grounds might exist for sustaining the complaint or a portion of it. But upon the classification of the goods in question under the changes that took effect October 18th, 1888, in force at the time of the hearing and still in force, the decision of the Commission is that the complaint is not sustained.



L. LIPPMAN & CO. v. THE ILLINOIS CENTRAL  
RAILROAD COMPANY.

A railroad company is under special obligation to give reasonable rates for its local business, but there are many influences which may affect through rates while not bearing upon local rates at all, or if at all, in less degree.

Through rates are not necessarily illegal which when divided between carriers give them less than their local rates, *provided* that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed.

By THE COMMISSION:

The complaint in this case is in the following words:  
"The Illinois Central Railroad charges \$1.85 per bale of cotton from this point to New Orleans, La.

"Steamboats on the Yazoo river issue bills of lading for cotton from points on the river north of here at the rate of \$1.85 per bale through to New Orleans by river and rail. The railroad pays the steamboats 50 cents per bale, and pays 10 cents per bale transfer from the steamboat landing to the cars. Consequently, for cotton shipped thus *via* Yazoo City, she receives only \$1.25 per bale, while she charges us here, for the same service, \$1.85 per bale."

This is the whole of the complaint, except the formal beginning and conclusion.

It will be seen that no complaint is made that the rate from Yazoo City to New Orleans is too high, or is in any way unreasonable, considered by itself; the complaint is that it is more than is accepted by the railroad company as its division of through rates from points above Yazoo City. It is quite consistent with the complaint that the rate from Yazoo City is a fair one, and that the rates from points above are unreasonably low, made so under the stress of competition, or for other reasons. Cases of that kind are sometimes met with, especially where water competition exists.

But, independent of any such consideration, it is well

known by all who are familiar with the influences which necessarily affect the making of rates, that local rates cannot be the measure of what the railroad company shall accept as its division of through rates. In the first place, the through rate is almost universally less, in proportion to distance, than the local rates; the carriers can afford to make it lower; if they were compelled to measure the one by the other there would be no inducement to form through lines, and shippers would be annoyed by having to deal with a succession of local roads instead of with one road acting for all. But if the through rate is less in proportion than the local, some of the carriers, if not all of them, must accept for their division of the through rate a sum less than the local rate. This is very manifest.

It is well known also, that many influences affect the making of a through rate that may not bear at all, or if at all in less degree, upon the local rates. This is especially the case when there are competitive lines reaching points for which the through rate is made or through which the transportation is to be had. Such competition may in some cases force the making of a through rate which will barely pay the cost of moving the freight.

A railroad company is under special obligation to give reasonable rates for its local business. If it does that it will not be illegal for it to accept business from other carriers on through rates which, when divided between them, will give to any one of them less for its division than its own local rates. This, however, is subject to the condition that the through rate is not in itself illegal, either because of being less than some one of the locals, or of being unjustly discriminating against individuals or localities, or so low as to burden other business with some part of the cost of the business on which it is imposed. The local shipper is not wronged by the carrier accepting through business, provided the condition above stated is observed.

This point has been touched upon in several cases heretofore decided; among others, in the *Boston Chamber of Commerce v. The Lake Shore & Michigan Southern Railway Co.*, 1 I. C. C. Rep. 436; *Detroit Board of Trade v. Grand Trunk*

*Railway Co.*, 2 I. C. C. Rep. 315; and *The New Orleans Cotton Exchange v. The Cincinnati, New Orleans & Texas Pacific Railway Co.*, 2 I. C. C. Rep. 375.

In the present case certain geographical facts appear which stand closely related to the tariffs of the Illinois Central Railroad, as found on file in this office. A branch of that road bears to the northwest from Jackson, Mississippi, which strikes the Yazoo River at Yazoo City, distant 45 miles, and continues northerly to Parsons, 70 miles farther on, running generally some distance east of said river and touching it occasionally; one of the points of contact is Greenwood, 18 miles south of Parsons. The railroad rate on cotton to New Orleans is \$2.75 from Parsons, falling to \$2 at Greenwood, and remaining \$2 at all stations as far south as Yazoo City, where the rate, as above stated, is \$1.85.

A joint tariff on file, effective November 19, 1888, shows a through rate of \$1.85 by boat and rail from the river landings between Greenwood and Yazoo City to New Orleans, divided as follows:

	Boat.	Transfer.	I.C.R.R.
Landings between Greenwood and Belzonia,	\$0.60	\$0.10	\$1.15
Landings between Belzonia and Yazoo City,	.50	.10	1.25

The case, therefore, presents an instance of grouped rates: First, all-rail, \$2, grouped from Greenwood, followed by a joint tariff, boat and rail, \$1.85, also grouped from Greenwood. The grouping of rates in this manner is at times justifiable, as the Commission has often had occasion to say, and there may be reasons adequate to justify it here. In a section of country like that between Greenwood and Yazoo City, rail and water rates mutually influence each other, so that transportation by rail from Yazoo City may be worth as much to a shipper there as to a shipper at Greenwood. Without going further into the question, no reason is stated by petitioner why transportation by boat from Greenwood and intermediate landings as far south as Yazoo City may not fairly take a common rate to New Orleans; and if the boats, instead of providing water carriage to New Orleans, elect to deliver the cotton to the railroad for transportation from Yazoo City, the division of the through rate is not of

itself an evidence of injustice to local shippers at Yazoo City. It is not correct to say, as appears to be understood by complainants, that the railroad company charges local shippers \$1.85, and charges the boat lines only \$1.25 or \$1.15 for the same service. The true situation is that a through rate is made from river landings above Yazoo City no greater than from Yazoo City itself. This of itself, without some substantial damage or injury resulting therefrom, does not constitute a contravention of the Act to regulate commerce. As has been repeatedly said by the Commission, in respect to rates constructed like those now under consideration, such a situation only becomes illegal when it can be shown that illegal results follow from it. *LaCrosse Manufacturers' and Jobbers' Union v. Chicago, Milwaukee & St. Paul R'y Co.*, 1 I. C. C. R. 631; *Business Men's Ass'n of Minnesota v. Chicago, St. Paul, Minneapolis & Omaha R. R. Co.*, 2 I. C. C. R. 52.

As the case is presented in the petition there is nothing which calls for an investigation by the Commission, and no order of notice will be made.

## IN THE MATTER OF THE PETITION OF THE PRODUCE EXCHANGE OF TOLEDO.

Decided March 2d, 1889.

1. After a complaint upon elaborate pleadings and proofs has been heard and determined by the Commission, and no party to the proceeding has applied for a re-hearing, an application for a re-hearing made by others who were not parties to the proceeding will not be granted.
2. In such a case, if upon a new or different complaint it should appear that any conclusion of the Commission in the case so decided has been erroneous, the Commission would feel it to be a duty to correct such conclusion.
3. Where relative rates are the same at points not far distant from each other on the same system of railroads, it is the practice of the Commission in determining the reasonableness of rates upon a complaint made at one of these points to consider the hearings and relative equality of rates at all of the points so situated, before ordering a charge at any one of them in order to avoid preference to one and prejudice to another.

*G. Denison Smith, Esq., for Petitioner.*

### REPORT AND OPINION OF THE COMMISSION.

**BRAGG, Commissioner :**

This is an application made by The Produce Exchange of the City of Toledo "for the opening of the question of the division of the Chicago rate, east and west bound, so far as that rate affects Toledo and Detroit." So much of the application as relates to this matter seeks a re-hearing of the report and conclusions of the Interstate Commerce Commission in the case of the Detroit Board of Trade and the Detroit Merchants' and Manufacturers' Exchange against the Grand Trunk Railway of Canada and the New York Central & Hudson River Railroad Company, decided October 22d, 1888, and found in 2 I. C. C. Rep., p. 315.

In support of this application the following grounds are stated in the petition :

"If the request is granted, the Exchange will ask for a reduction of the rate at Toledo and Detroit, from 78 to 75 per cent.

"If the Commission permits, the Exchange would hope to

prove as reasons for the reduction: That there never was, and is not now any valid reason, necessity or common sense in grouping Toledo and Detroit with a great many points in the west and southwest under such uniform and arbitrary rate of division. That the position of Toledo and Detroit does not correspond in any respect to that of the western points, because they are large markets for the purchase and distribution of agricultural products.

"That the system was consented to by the Vanderbilt lines in a spirit of compromise, by which these lines were willing in a measure to prevent the traffic coming to the Lake, where there was more active competition with them, and recovering it, and much more, by their direct connection between the southwest and their lines east of Toledo, at Fremont, Sandusky and Cleveland.

"That the rates from southwestern points over their lines to the seaboard are so much lower, per mile, than the rates to the lake ports which are loaded down with the effect of the 78 per cent. division of the Chicago rate, as to shut us out from participation in that business.

"That the local rates from all Illinois points to Chicago, and thence to the seaboard, compared with local rates to Toledo, and thence to the seaboard, also precluded our competition.

"These points, the Exchange hopes to present proof of, if the question is opened."

After stating the application for a re-hearing and the grounds in support thereof, as above set forth, the petition proceeds as follows:

#### "ANOTHER PROPOSITION.

"The Exchange would also like to make the proposition, that the competition to Chicago is of so unusual and irresistible a character as to justify her in asking that the local business on the Wabash and Clover Leaf roads be transported to Toledo at rates corresponding to the price per mile charged on seaboard business.



## "ANOTHER PROPOSITION.

"The Exchange desires to present a complaint concerning Boston and other New England rates in their relation to Toledo, compared with other points.

"The additional rate charged at Toledo and Detroit, to Boston, and what are called Boston points, over the rate to the seaboard is 5c. per 100 pounds. For example: The rate is now 19½c. per 100 pounds on grain, Toledo to New York, and 24½c. to Boston and New England points.

"The Exchange believes that indisputable proof can be made why there should be no addition to the Boston over the New York rate, and would heartily welcome an opportunity to do so, if the Commission permits, but in any event we desire relief on the case presented as follows, viz:

"The railway lines from Buffalo east, make the rate to Boston and Boston points 2½c. per 100 pounds higher than to New York, while at Toledo and Detroit they insist on 5c. per 100 pounds differential. The Exchange will prove what we charge and we want relief.

"This addition of 5c. per 100 pounds to Boston, &c., is seized upon and claimed by the Lake Shore railway as a basis for a charge of 10c. per 100 pounds on grain, Toledo to Buffalo. The divisions of the 19½ cents per 100 pounds to New York give less than 8c. to Buffalo and less than 9c. on the Boston rate. The Lake Shore road desires to make the rate from Toledo to New York 78 per cent. of the Chicago rate, and then insists upon 2c. over the division of that rate on grain from Toledo to Buffalo, thus piling up the percentage of discrimination against us.

"We hope the Commission will give Toledo an opportunity to present her case, on these propositions, by the proof of the facts charged."

We first consider so much of this application as relates to a re-hearing in the case of the Detroit Board of Trade and the Detroit Merchants' and Manufacturers' Exchange against The Grand Trunk Railway of Canada and The New York Central & Hudson River Railroad Company, to which we



have already referred. That case was one in which a very large volume of testimony was taken by the parties at Detroit, to which afterwards was added the examination of a number of witnesses before the Commission at Chicago in July, 1888. It was elaborately argued by counsel orally and on briefs. It was claimed in that case that Detroit was unjustly discriminated against by the defendants in making their rates on shipments originating at or destined to that city, 78 per cent. of the Chicago rate on east, as well as west bound freights, and it was insisted that taking into consideration the distance and geographical position of Detroit that such percentage should be 70 per cent. of the Chicago rate. It was also claimed in that case that Detroit was unjustly discriminated against by the defendants because the percentage of the through rate on freight passing through Detroit on east and west bound shipments, originating at Chicago or points west and north-west of Chicago, and destined to the seaboard at New York or New England points, or originating at New York or New England points and destined to Chicago or points north-west of Chicago, was not as high, according to length of haul for equal distances, as it was on freight originating at Detroit and destined to the points named, or originating at the points named and destined to Detroit.

The Produce Exchange of Toledo was not a party to that proceeding, but when it was heard by the Interstate Commerce Commission at Chicago on the 31st day of July, 1888, a committee of the Produce Exchange appeared before the Commission and submitted a written argument, in which the relative position of Detroit and Toledo as to transportation facilities was discussed, and the rates prevailing at each of these cities, showing that the percentage was the same at Toledo as at Detroit, and insisting that if the reduction was made at Detroit it should also be made at Toledo, and expressing the opinion that both Toledo and Detroit had just cause of complaint for their treatment by the railroads in fixing the percentage of the Chicago rate. Although The Produce Exchange of the city of Toledo was not a party to that proceeding, the Commission heard and considered its

argument in connection with all the evidence and arguments made in the case.

After such a case so presented has been decided by the Commission, it would be an anomaly in proceedings of this character, which are judicial in their nature, for a re-hearing to be granted and the case subsequently opened by the Commission at the instance of one who was not a party to the original proceeding. No application for a re-hearing has been made in that proceeding by the Detroit Board of Trade or the Detroit Merchants' and Manufacturers' Exchange. It was a case in which a great deal of time was occupied, and labor and effort expended by the parties to it in presenting all the questions involved in the most elaborate manner for the consideration of the Commission. In preparing its report and conclusions thereon, the Commission fully and carefully considered all the evidence and arguments presented in that proceeding. We are now asked on the application of The Produce Exchange of the city of Toledo, which was not a party to that proceeding, but which had the opportunity to have been, if it had so desired, to set aside all that we did in that case in order that the questions involved in it may be again presented and heard and reconsidered by us. We know of no authority conferred upon us to grant a re-hearing upon such an application. If it should appear under a new, or different, or any complaint that our conclusions, or any of them, in that case are wrong or need modification, we should feel it to be our duty to correct them, and would not consider ourselves deterred from doing so by the fact that we made the decision we did in that case. That, however, is a very different proposition from the one here presented by this application for a re-hearing.

It appears from this petition that the Produce Exchange of Toledo also desires to make several other complaints against the rates as they affect the business interests of the city of Toledo. These are outlined in the petition, extracts from which are above set forth. There is nothing that prevents the Produce Exchange of the city of Toledo from making these the subject of complaint to the Interstate Commerce

Commission if it desires to do so. If the Produce Exchange of the city of Toledo also desires to complain before the Commission of the manner in which the business in that city is affected by its percentage of the Chicago rate on east as well as west bound freight, it can do so, and the Commission will consider it. The fact that the relative rates at Toledo and Detroit are the same, is one that the Commission could not overlook in considering and determining any such complaint. In regard to all or any of these questions mentioned in the petition, The Produce Exchange of Toledo will have an opportunity to be heard concerning them whenever it may seem proper to make complaint before the Commission; and this without the necessity of the Commission making any order for a re-hearing in the case of the Detroit Board of Trade and the Detroit Merchants' and Manufacturers' Exchange against the Grand Trunk Railway of Canada and the New York Central & Hudson River Railroad Company.

THE MICHIGAN CONGRESS WATER COMPANY,  
COMPLAINANT, v. THE CHICAGO & GRAND TRUNK  
RAILWAY COMPANY, DEFENDANT.

Submitted February 5, 1889—Decided March 23, 1889.

- I. Where a complaint is made against the reasonableness of through rates agreed upon by several connecting lines, it is necessary to make all of such connecting lines parties defendant. Citing and affirming the rule laid down on this subject in 1 I. C. C. Rep. 199; 1 I. C. C. Rep. 237; 1 I. C. C. Rep. 490.
- II. Unauthorized declarations of a depot agent, implying that a tank-car, which has just returned from one long journey, is in a safe condition to be loaded and started on another long run, are not binding upon the railway company.
- III. After a freight tank-car has just returned from one long journey, it is the duty of the carrier, before permitting it to start out loaded on another distant run, in which the lives and safety of brakemen, trainmen, and the property of the shipper will be involved, to have such car carefully inspected by a competent inspector, in order to ascertain whether it is in a safe condition for such service.
- IV. On all the facts in this case, held:—
  - 1 That the tank-car of complainant when loaded was not in a safe condition to be transported by the defendant in April, 1888, and that it was not the duty of defendant to transport it at that time; but it was the duty of complainant to have it repaired before insisting upon its being transported by the defendant.
  - 2 That neither the defendant nor any of its officers and agents have been engaged, as complained, in combinations with connecting lines, or other parties, to prevent complainant from obtaining reasonable rates and facilities for the transportation of its mineral water, or to give other mineral waters a preference in rates and facilities over those accorded to complainant.
  3. That defendant's officials and agents have not acted in a malevolent spirit toward complainant in throwing obstructions in the way of its transporting mineral water over defendant's line and its connecting lines.

*William S. Edwards, Esq.*, for petitioner.

*E. W. Meddough and A. C. Raymond*, for defendant.

## REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner* :

The material questions presented by the complaint in this proceeding as amended, and by the answers thereto are :

1. Are the rates charged complainant for transporting mineral water unreasonable ?
2. Did the defendant violate the statute in refusing to transport over its lines a tank-car of mineral water for the complainant in April, 1888 ?
3. Has the defendant been engaged in unlawful combinations with other carriers or parties to prevent complainant from obtaining fair and reasonable rates in the transportation of mineral water, or to give other mineral waters a preference in rates over those accorded the complainant ?
4. Has the course pursued toward the complainant by the officials and agents of defendant been malevolent in spirit and indicative of a disposition to throw obstructions in the way of complainant shipping mineral water over defendant's line, or to prevent complainant from having fair and reasonable rates in transporting mineral water over defendant's line ?

A great deal of evidence has been taken in this case, much of which is immaterial and irrelevant. We find the material facts to be, that complainant owns and operates a valuable mineral artesian well at the city of Lansing, in the State of Michigan, from which for many years past it has been furnishing this water in considerable quantities in various portions of the country by shipment over rail lines, as well as in the State of Michigan. In the State of Michigan the established price of this water is ten cents per gallon ; in bulk, when transported in quantities of 3,000 gallons in a tank-car to market in other States, it is worth about 16½ cents per gallon ; and when bottled up for the market in other States it is worth about thirty cents per gallon. Until

about three or four years ago its shipments of this water were chiefly over the Lake Shore & Michigan Southern Railway, and since then have been over the line of defendant and its connecting lines. The Chicago & Grand Trunk Railway extends from the city of Chicago, in the State of Illinois, to Fort Gratiot, in the State of Michigan, a distance of 335 miles, and by its connecting lines reaches many of the eastern cities and seaboard points. To points off its main line, which extends, as already stated, from Chicago to Fort Gratiot, its rates are made by agreement with connecting lines. The rates specifically complained of in this proceeding are made by agreement with its connecting lines, and relate to instances of shipments to New York in a tank-car owned by complainant. In a general way, but not upon specific allegations, complaint is also made of rates charged by defendant and its connecting lines on shipments in barrels, bottles and jars, less than car-loads, over defendant's line and its connecting lines.

The answer to the original complaint in this proceeding distinctly gave notice to the complainant, as matter of fact and by way of defense, that all the rates complained of in this proceeding were made by the defendant by agreement with its connecting lines, and that defendant alone was not responsible for them. Notwithstanding this, the complainant continued to prosecute its complaint against the defendant alone without making any of its connecting lines parties to the proceeding, thereby taking issue to this averment of the complaint and denying its truth. The complainant filed a supplemental complaint, and in this it made none of the connecting lines of the defendant parties. The proof abundantly sustains this averment of the answer, and there is no evidence in conflict with it. Upon the case as thus made, we can enter into no consideration or determination of the reasonableness of the rates complained of. Other carriers that are connecting lines with the defendant are interested in these rates and are entitled to be heard regarding their reasonableness. After the complaint was made, the proof shows that the defendant made earnest efforts to have the



tank-car rate reduced by its connecting lines from fourth class to sixth class, but only succeeded in having it reduced to fifth class, which was a reduction of from 33 cents per hundred pounds to 28½ cents per hundred pounds on mineral water shipped from Lansing, Michigan, to the city of New York.

It appears that the first shipment of mineral water made in a tank-car by complainant from Lansing to New York was on the 15th of September, 1886. Then there was no prescribed rate for such freight, and the agent of the defendant at Lansing gave a rate on it of 28½ cents per hundred pounds to New York, amounting to the sum of \$57.00 for the car. Subsequently rates were made and prescribed by the defendant and its connecting lines under what is known as the Official Classification by which the rate was fixed at 33 cents per hundred pounds on mineral water from Lansing to New York, and under this prescribed and published rate complainant shipped another tank-car of its mineral water on the 11th day of June, 1887, from Lansing to New York, and according to this rate the charge was \$79.20 for the car. About the month of August, 1888, the rate on this water in tank-cars from Lansing to New York was reduced to 22½ cents per hundred pounds by the defendant and its connecting lines, as already stated. The complainant claims that the charge of \$79.20 per car in the instance mentioned, being at the rate of 33 cents per hundred pounds, was an overcharge, and was unreasonable; and as evidence of this relies upon the subsequent reduction, and claims that the defendant agreed to refund the difference between the rate of 28½ cents per hundred pounds and of 33 cents per hundred pounds on the car-load of water. As the defendant's connecting lines are interested in this question and are not parties to this proceeding, we can enter into no investigation or determination of it.

Many reasons are given by the defendant in its answer, as well as in evidence, why it and its connecting lines refuse to allow mileage on the tank-car of complainant and only return it empty, free of charge, and why defendant and its connect-



ing lines make the rates that they do upon the water when shipped in this tank-car. We enter upon no consideration of these reasons at this time, because, as already stated, the connecting lines of defendant are not parties before us in this proceeding.

The refusal of defendant to transport the tank car of complainant over its line in the month of April, 1888, presents a different question. This refusal was based upon the condition of the car at that time, and if in this defendant erred, it is responsible. The great preponderance of evidence shows that it was then an old and dilapidated car. It had been originally a circus car, constructed for the transportation of circus wagons which are not heavy freight, and for this reason it had not been strongly built. Afterwards it was changed to be used in carrying two tanks filled with mineral water of three thousand gallons and weighing from twenty to twenty-four thousand pounds. The car was 51 feet, 9 inches in length, being about one-third longer than an ordinary freight car. The iron tank held 2,500 gallons and the smaller tank 500 gallons. This iron tank was 29 feet in length, so that it did not extend from one end of the car to the other, and in this way failed to rest upon both of the burden-bearing points of the car. It had been condemned once by the defendant's car inspector in the summer of 1887 as unsafe to be transported over its lines, and after having been repaired, was then taken by the defendant and its connections with a load of mineral water to New York. While in the yards at Jersey City in February, 1888, it was seriously crushed, knocked off its trucks and again underwent repairs and was returned to Lansing empty in April, 1888. Immediately after it returned to Lansing, at the request of one of complainant's agents, it was placed upon the side track by defendant's depot agent to be again loaded with mineral water. No inspection of it appears to have been made until after it was loaded. After it was loaded with mineral water by complainant it was then inspected by the car inspector and superintendent of defendant's road. At that time it was found that three of the six sills of the tank-car were broken, and had been repaired before its last return

to Lansing by bolting other pieces of timber so as to lap over the sides of these broken sills. The pieces of timber thus bolted to the broken sills did not reach the transoms. One of the transoms of the car was broken over the centre bolt. There was on this car a caboose for the purpose of carrying the bottles and machinery to bottle the water. This car is about two feet lower than a refrigerator car and about one foot lower than an ordinary freight car. There was a ladder made of sheathing nailed with cut nails instead of being fastened with bolts. The brakemen had to climb this ladder in passing over the caboose in going the length of the train. The foothold afforded by the steps of the ladder was only three-fourths of an inch for the toe of the shoe.

After the defendant had refused to haul the tank car in April, 1888, on account of its then unsafe condition, the complainant appealed to the engineer of the State of Michigan, an officer of the State appointed by the railroad commission of Michigan to examine cars for the purpose of determining whether they are in condition to be safely transported over railroads, in order that this engineer might make a report to the railroad commission of Michigan, upon which the commission would order the defendant to move this tank car. The State engineer, who we must presume, in the absence of evidence to the contrary, was a competent officer for this work, and whose report and testimony indicate that such was the fact, made a careful examination of the car, and decided on account of its defects that it would be unsafe to order defendant to move the car, and made a report in writing to this effect to the railroad commission of Michigan. In this condition this tank car remained there loaded from about the 20th of April, 1888, until the month of December of the same year. The ladder might have been repaired and made safe at an expense of two or three dollars. The expense that would have been necessary to have put the entire car in a safe condition for transportation at that time would have been very considerable. There is no evidence that the complainant directed the defendant to have these repairs made.

or undertook itself to have this tank car repaired and put in a condition to be safely transported over defendant's line and its connecting roads.

We feel compelled to find the facts to be that this tank-car at the time defendant was called upon by complainant to transport it in April, 1888, was not then in a condition to be safely carried, loaded as it was, over the line of defendant and its connecting lines, and that defendant was justified by its condition in refusing to move it at that time. The theory of the complainant is that the transom of the car was broken by the defendant's agents or servants after it arrived at Lansing in April, 1888; but the evidence does not sustain this theory of the case; on the contrary, the evidence strongly tends to show that it had been broken before that time. If evidence not before us would show that defendant was responsible for the breaking of this transom, then the remedy of complainant for damages on account of that would have been in the courts, and not before the Interstate Commerce Commission.

We do not find the facts to be, upon the evidence in this proceeding, that either the defendant or any of its officers or agents have been engaged directly or indirectly in any combinations with connecting lines or other parties to prevent complainant from obtaining reasonable rates and facilities for the transportation of its mineral water, or to give other mineral waters a preference in rates and facilities over those accorded the complainant. The fact is established by the evidence that the defendant has used its best endeavors to furnish complainant lower rates than could be obtained from connecting lines.

We do not find the facts to be that defendant's officials and agents have acted in a malevolent spirit toward complainant and have thrown obstructions in the way of its transporting mineral water over defendant's line or its connecting lines. In the light of all the evidence, the conduct of the brakemen and freight conductor who denounced complainant's tank car in April, 1888, when they were required to place it on the track to be loaded, and expressed the wish

that instead of being there for that purpose it might be blown up with dynamite, was fairly attributable to their opinion of the unsafe and dangerous condition of the tank car, and to the personal hazard attending the transportation of it over defendant's line, rather than to any malevolent spirit they entertained toward complainant or its business. They evidently considered it a dangerous car which they and their comrades were expected to operate, and in language more forcible than decorous they took occasion to express their opinion of it.

I. We briefly state our conclusions and opinion in this proceeding. We have repeatedly decided that we can make no order on a question of rates where the necessary parties are not before us. In *Allen v. The Louisville, New Albany & Chicago Railway Company*, 1 I. C. C. Rep., p. 199, we held that all the roads constituting the line which makes the through rates complained of should be parties to the complaint which seeks to compel a reduction of the through rates. Again in the case of *Harwell v. The Columbus & Western Railroad Company*, 1 I. C. C. Rep., p. 237, we held that the parties affected are entitled to be notified in case a change in rates is asked; and that we would not make an order correcting an alleged unjust discrimination, unless the proper parties were before us. And again in the case of *Riddle, Dean & Company v. The Pittsburgh & Lake Erie Railroad Company*, 1 I. C. C. Rep., p. 490, we decided that where the relation of any carrier to the matter complained of is such that it is in whole or in part materially responsible for the alleged grievance, and has a direct interest in any investigation of the subject-matter involved, that carrier should be a party to the proceeding, and if not a party no relief can be given against it. The rule as to proper parties in such a proceeding as this is plain, simple, and elementary. There is no difficulty in observing it, and especially where, as in this proceeding, the defense set up in the answer shows that all the necessary parties had not been made defendants. This put the complainant upon an inquiry which it should at once have made, and amended its complaint to correspond

with the facts unless it was prepared to prove that this averment of the answer was untrue.

II. The theory upon which complainant insists that the defendant was bound to take the tank-car and transport it after it had been loaded by complainant with the knowledge of defendant's depot agent in April, 1888, without regard to its actual condition, is one that cannot be sustained. It is narrow and technical and has no semblance of reason or justice to support it. It overlooks considerations that are vital to the rights of the defendant as well as to the public. The depot agent had not examined the condition of the car. It was not his business to examine its condition. The company had an inspector of cars and a superintendent whose duty it was to examine the condition of this car and determine whether it was in a condition to be safely transported over defendant's line.

The day after its arrival at Lansing in April, 1888, complainant's agent stated to the depot agent of defendant that he was ready to load the car and asked the depot agent to have it moved to the side track where it could be loaded by complainant. To this the depot agent replied "All right," and had the car switched to the side track where complainant's agents loaded it. Within a few days afterwards, the foreman of car inspectors and superintendent of defendant examined the car and found it unsafe to be transported when loaded, but there is no evidence that this was reported immediately to the depot agent. But whether it was reported to him and he failed to mention it to complainant's agent, when the latter went to him for a billing receipt for the loaded car and he refused to give the billing receipt, because, according to his opinion, based on his own ideas, or those of the switchmen, that the caboose and ladder were dangerous and would have to come off, is wholly immaterial. His judgment or his opinion about it amounted to nothing. The defendant had the right to rely for its own protection, that of complainant and of the public, in this matter, upon the judgment of its car inspector and superintendent who were trained and experienced experts in the repairing and building of cars,

and whose eyes and minds were skilled in detecting defects in cars and in determining whether they were in condition to be safely transported, and who, alone, the defendant had selected to perform this duty. In order to be reasonably assured of its safe condition it was the duty of the defendant to have such a car, which had just returned from one long journey, carefully inspected by its inspector before starting out on another, in which the lives and safety of brakemen, trainmen, and engineers, and the property of complainant would be involved. No unauthorized declarations or statements of the depot agent could dispense with such a duty as this, or work a parol estoppel, or verbal admission regarding it. And when the report of this car inspector and superintendent, to say nothing of the State engineer, had established the fact that this car was in an unsafe condition, then the complainant should have had it promptly repaired.

III. The findings of facts we have made fully disposes of the other questions in this proceeding, and it is unnecessary to say more regarding them. All questions as to the reasonableness of rates are left open and undecided, and may, if the complainant sees proper, be made the subject of complaint against the necessary parties as herein indicated.

The order of the Commission is that this petition must be, and the same is hereby, dismissed.



**T. M. C. LOGAN, F. D. BABCOCK, AND E. M. PARSONS,  
EXECUTIVE COMMITTEE OF THE NORTHWESTERN IOWA  
GRAIN AND STOCK SHIPPERS' ASSOCIATION v. CHICAGO  
AND NORTHWESTERN RAILWAY COMPANY.**

Petition Filed May 8, 1888.—Answer Filed June 4, 1888.—Case Heard at  
Dubuque, Iowa, July 26, 1888. Decided March 22, 1889

1. The service may be rendered under such dissimilar circumstances as to make it lawful to charge more for the same distance on one line or branch than on another line or branch of the same road.
2. A departure from the rule of equal mileage rates as applied to the several branches of a road is not conclusive that such rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed.
3. A railroad company, while long maintaining a rate without the presence of competition on other than equal terms, is making evidence that such rate is not too low.
4. The Chicago & Northwestern Railway Company has two routes or lines between Chicago and Sioux City, formed by its main line and different branch lines, and a greater charge for a shorter than for a longer distance in the same direction, the shorter being included in the longer distance, on either of said routes or lines is unlawful under the fourth section of the Act to Regulate Commerce.
5. Two of the south branch lines of said railway company are crossed by the main line of the Chicago, Milwaukee & St. Paul Railway Company. From points on these branch lines the Northwestern Company comes in competition with the St. Paul Company, from its main line points. *Held*, that the charges on these branches do not establish a standard of reasonable rates for like distances from points on a north branch of the same company, where no such competition exists.
6. Said railway company had in force from Nebraska points to Turner, Illinois, a tariff sheet directing corn destined to the sea board to be billed from such Nebraska points to Turner at different rates when destined to different sea-board points. The corn was carried from Nebraska to Chicago, where the re-billing and transferring was done. No shipments could be made under this tariff from Iowa points. *Held*, that as billed, the shipment was to Turner, that by billing at different rates to Turner, an illegal preference was given, and that Iowa grain growers were subjected to unreasonable disadvantage in marketing corn.

*F. D. Babcock and E. M. Parsons* for complainants.

*W. C. Goudy* for defendant.

*Spencer Smith* for Board of Railroad Commissioners of Iowa.

REPORT AND OPINION OF THE COMMISSION.

**MORRISON, Commissioner:**

The complainants are the officers, President, Secretary,



and Treasurer, of the Northwestern Iowa Grain and Stock Shippers' Association. Together they are the Executive Committee of the Association, and in its behalf authorized to institute these proceedings in the interest of its membership.

They allege that the Chicago & Northwestern Railway Company is a common carrier of freight and passengers from Council Bluffs and other Missouri River and Western Iowa points, to Chicago and other eastern points over the lines and branch lines of railway operated and owned or controlled by it, and marked in light-red lines on the map of the State of Iowa printed as part of the State Railroad Commission's Report for 1887, and made "Exhibit A" to their complaint.

That said Railway Company has charged and continues to charge the members of said Association for transportation on its branch lines north of its main line and west of Carroll station greater rates than it charges for like service for relatively the same distances on its branches south of the main line and west of Carroll, or on its main line from Council Bluffs and Carroll and intervening stations.

That the rate on grain in car-loads to Chicago from all of said points on main line and branches was 22 cents per one hundred pounds at the time the Act to regulate commerce became operative, and so remained until August 1, 1887, when it was reduced to 18 cents from the points on the main line and on the Audubon and Kirkham branches south of main line, while it remained at 22 cents from the points on the lines or branches north of main line.

That on August 25, 1887, the rates were made 21 cents from points on lines and branches north, and 19 cents by the rate sheets from points on main line and branches south, while the 18-cent rate was the actual rate on south branches and main line points until November 1, 1887, when there was a re-adjustment on the basis of the August 25th rate sheets, and the rates from the main line and south branch points were made 19 cents, and from the north branch points 21 cents.

That on February 29, 1888, the defendant company in connection with the Sioux City and Pacific Railroad Company

issued a joint tariff making a rate on cattle, hogs and sheep to Chicago of \$30 per car from Council Bluffs, Omaha, and Sioux City, and while this rate was still in force defendant's rate from Onawa, River Sioux, Ida Grove, Wall Lake and Holstein was \$45 per car for the shorter distance to Chicago over the same line, and in conflict with the fourth section of the Act to regulate commerce.

That the defendant in connection with the branch and continuing lines it controls, on December 30, 1887, issued its special tariff on corn and oats when destined to New York, Boston, Philadelphia and Baltimore, at 11 cents per hundred pounds from Blair and other points in Nebraska to Turner Junction or Rochelle, Illinois, the corn and oats to take Chicago rates east from Rochelle and Turner. This special tariff, which was available and in force from points in Nebraska west of Iowa on defendant's road and roads controlled by it, was not published at Carroll, Maple River Junction, or other points in Iowa, and no shipments of corn and oats destined for Eastern sea-ports could be made on this road from Iowa points to Rochelle or Turner.

That said Company had in effect from February 17 to March 1, 1888, at Carroll and Missouri Valley and intervening Iowa stations on its main line, a joint tariff of 36½ cents per hundred pounds on corn and oats through to New York *via* Chicago, which rate was not available to complainants for shipments they desired to make from Odebolt, Arthur and Ida Grove, stations less distant from Chicago than Missouri Valley. The complainants offer the rate sheets or tariffs of defendant as exhibits in support of their complaint, and as evidence of the unjust discriminations, of the violations of the fourth section of the Act to regulate commerce, and of the other wrongs alleged against said Railway Company.

The defendant for answer, admits that it is a common carrier of freight from points in the State of Iowa on the Missouri River to the City of Chicago over its own lines and lines controlled by it, that such lines are indicated on a map of the State of Iowa made Exhibit A to the petition, and the distances between the points mentioned in said petition are

approximately as stated therein. And it further admits that the various exhibits made are correct copies of tariffs and rate sheets issued by the defendant company.

The defendant further answering, admits that previous to August 1, 1887, the rates on corn from Western Iowa stations (on main line and all branches) were the same, and on that date such rates from Council Bluffs and Carroll and intermediate stations on the main line and from all points on the (Kirkham and Audubon) branches south were reduced from 22 to 18 cents, because of reductions on other railroad lines from Council Bluffs, one of which, the Chicago, Milwaukee & St. Paul Railway, crosses the defendant's Audubon and Kirkham branches at Manning station, and that this reduction was not put in force from Ida Grove, Odebolt or any other station on lines or branch lines north of main line not crossed by lines running from Council Bluffs. That on the 25th day of August, 1887, the rate on corn at Sioux City, Ida Grove and other stations on Northern Iowa branches, was reduced from 22 to 21 cents, and again on October 4, 1887, from 21 to 20 cents, and that on November 1, 1887, another adjustment of rates on corn was made from all Western Iowa points. The rates from points on main line and south branches were then fixed at 19 cents, from Ida Grove and stations other than Odebolt on branches north of main line at 21 cents, from Odebolt at 20 cents.

Further answering the defendant says that in December, 1887, it was compelled to make, and did make, with railroads running from Chicago to the Atlantic sea-board through arrangements, and with such railroads established rates from points in Nebraska to Baltimore, Philadelphia and New York *via* junction points in Illinois, and joined in making the same rate from Rochelle and Turner that was made by other carriers from Peoria. That this arrangement and rates so made did not apply to Ida Grove or other stations on the "Northern Iowa Division" north of, and not on, the main line of defendant's road.

And the defendant answering further, denies that its rates on stock from River Sioux, Onawa, or other points, have been made in violation of the Act of Congress as alleged in the

petition, and in support of its denial calls attention to its rate sheet taking effect February 29, 1888, and Exhibits of complainants, in which it is expressly stated: "The above rates will be the maximum for intermediate points in the same direction on the direct line and all points on branches south of main line, Council Bluffs to Chicago." And further denies that in the differences in rates made, their application or adjustment, there is or has been any unjust discrimination or any violation of the fourth section of the Act of Congress, and denies that the complainants, or any of them have been damaged in any respect so as to make the defendant liable as claimed in the petition, and denies that any discrimination has been made against either one of the petitioners.

In addition to the statements made in the complaint and admitted in the answer, it appears from the exhibits and from testimony heard, that:

1. Carroll, distant from Chicago.....395 miles,  
    Maple River Junction, distant from Chicago.398 "  
    Dennison....."       " ....423 "  
    Missouri Valley....."       " ....467 "  
    Council Bluffs....."       " ....488 "

on the main line;

Audubon, distant from Chicago.....431 "

on the Audubon branch, and

Kirkham, distant from Chicago.....430 miles,  
 on the Kirkham branch, are points from which a lower  
 rate is charged. That

Odebolt, distant from Chicago.....425 miles,  
 Arthur. ...."       " .....430 "  
 Ida Grove...."       " .....437 "  
 Mapleton....."       " .....460 "

on the Sioux City and Mapleton line;

Holstein, distant from Chicago.....451 miles,  
 Correctionville. "       " .....475 "  
 Merville....."       " .....496 "

on the Kingsley and Merville line, and

Onawa, distant from Chicago.....480 "  
 River Sioux.. "       " .....490 "

on the Sioux City and Pacific line, are points from which the greater charges complained of are made.

2. The main line of defendant's road extends from Chicago, Illinois, to Council Bluffs, Iowa. The branches south are the Kirkham and Audubon branches, which are one and the same line from the main line at Carroll to Manning, 18 miles, then a branch southeast from Manning 18 miles to Audubon, and a branch southwest from Manning 17 miles to Kirkham. The branches north are the Sioux City and Pacific railroad from Missouri Valley on main line 75 miles to Sioux City. The "Sioux City and Mapleton line" from Maple River Junction on main line 81 miles to Onawa on Sioux City and Pacific Railroad; and the Kingsley and Merville line from Wall Lake on the Sioux City and Mapleton line 80 miles to Merville. These lines are operated and are owned or controlled by the Chicago & North-Western Railway Company.

3. The defendant has two lines or routes from Sioux City to Chicago: one over the Sioux City & Pacific Railroad to junction with main line at Missouri Valley, thence over main line to Chicago; the other over the Sioux City and Pacific Railroad to Onawa station, then over the "Sioux City and Mapleton line" to the main line, and over main line to Chicago, is the shorter of the two lines.

4. The defendant had in force under its tariff sheet taking effect February 29, 1888, a rate of \$30 per car-load of cattle, hogs, or sheep to Chicago from Sioux City, while it maintained a higher rate of \$45 for the shorter distance from Ida Grove and other points on the "Sioux City and Mapleton line." From Wall Lake station on said Sioux City and Mapleton line shipments were made at \$38, while the rate from Sioux City was \$30—and on said rate sheet of February 29, 1888, was the following: "The above rates will be the maximum for intermediate points in the same direction on the direct line and all points on branches south of main line, Council Bluffs to Chicago."

5. That the 11-cent rate on corn and oats destined to east-

ern ports, which took effect December 30, 1887, from Nebraska points to Rochelle or Turner, Illinois, over defendant's main line and connecting lines controlled by it, (the through rate being from Rochelle or Turner to New York  $27\frac{1}{2}$ , to Boston  $32\frac{1}{2}$ , to Philadelphia  $25\frac{1}{2}$ , to Baltimore  $24\frac{1}{2}$ ) was never published at, nor could any shipment at such rate be made from Western Iowa points on defendant's road or branches. No billing or re-billing was done at Rochelle or Turner. The carriage was through from Nebraska to Chicago where the transfer was made. While such 11-cent rate was in force from Nebraska points, E. M. Parsons, Secretary and member of said Association, had at Carroll and Maple River Junction, Iowa, large quantities of corn, 1,374,505 pounds, to be shipped, and which he offered to defendant for shipment to New York by way of Rochelle or Turner, which was refused. He shipped to Chicago at the 19-cent rate and could only ship to New York at a rate 8 cents above the rate from Nebraska points.

6. From February 17 to March 1, 1888, defendant had in force a joint through tariff from Nebraska points over its main line and connections to New York at  $36\frac{1}{2}$  cents per hundred pounds of corn and oats in car-loads, and during that time carried from Carroll, Iowa, on main line, at least one shipment at that rate without billing. During said period from February 17 to March 1, 1888, Gray, Babcock & Sears, grain dealers, offered to defendant for shipment from Odebolt, Arthur and Ida Grove to New York large quantities of corn at the same rate given by defendant to shippers from Nebraska points and at Carroll, but which the defendant refused to transport at other than the local rates to Chicago added to the rate thence to New York.

7. The defendant issued its rate sheet putting and continuing in force from March 5 to 18, inclusive, a rate from Northwestern Iowa and Missouri River points to Turner, Illinois, on corn and oats in car-load lots destined for New York and other eastern ports, which rates from points on main line and south branches of defendant's road were two cents lower than from points equally distant on north branches. The

rate sheets directed the freight to be billed to Turner, but at different rates as it might be destined respectively to Boston, New York, Philadelphia or Baltimore. At the bottom of the rate sheet was a memorandum of rates from Turner, Illinois, to New York  $27\frac{1}{2}$ , Boston  $32\frac{1}{2}$ , Philadelphia  $25\frac{1}{2}$ , Baltimore  $24\frac{1}{2}$  cents per hundred pounds.

8. In August, 1887, Gray, Babcock & Sears, grain dealers, had for shipment and shipped to Chicago large quantities of corn from Odebolt, Arthur and Ida Grove on the "Sioux City and Mapleton line" at 22 and 21 cents, when from Missouri Valley, Council Bluffs, and points on the main line more distant from Chicago than Odebolt, Arthur and Ida Grove, defendant's rate was but 18 cents. In September, October, November and December, 1887, while the published rate from Carroll and other Western Iowa points on the main line, including Dennison, was 19 cents, shipments were made from Dennison at 18 cents.

The facts found on investigation and stated above, chiefly relate to details, the parties being nearly agreed upon the main facts. The grain and stock shippers complain of a difference in rates or unequal charges for equal distances. The charges to Chicago from Northwestern Iowa being higher for the same distances from stations on the railway company's north branch lines than from stations on its main line and branches south. The difference against the north branches as now adjusted is \$5.60 on the car-load of corn. This is complained of as so much greater compensation paid, and to be paid, by some persons than by others for a like service and is alleged to be unjust discrimination and unlawful. In the State of Iowa the rate per hundred pounds to all persons shipping car-loads must be equal for equal distances on the same class of freight over the same road—main line and branches. The people are accustomed to regard this provision of law with favor as an approach to the general rule that charges under the same circumstances ought to be the same per ton per mile. Shippers, when it is for their interest, are accustomed to insist on the rigid enforcement of the rule, yet the fact is recognized in that State that unequal



charges for equal distances may be made without unjust discrimination.

In regulating railroad transportation for Iowa the Board of Railroad Commissioners authorize some roads to charge 15 per cent. and some 30 per cent. greater rates than others, and any road may receive \$7 more for carrying 14 tons (a car-load) of corn across the State than it takes for hauling coal of equal weight the same distance over the same line. If some conditions make it lawful to require the defendant Railway Co. to take \$5.20 (15 per cent.) less than its rival, the Chicago, Milwaukee & St. Paul Railway Co. may take for hauling a car-load of corn 350 miles between Council Bluffs and Clinton, Iowa, the same or other conditions might make it lawful to charge more for the same distance on one line than on another line, or branch line, of the same company.

A departure from the rule of equal mileage rates as applied to the several branches of a road or system of roads is not conclusive of the unlawfulness of rates, but the company making such departure should have satisfactory reasons for such variance of rates and must show them to be reasonable when disputed. This burden is by the Act to regulate commerce put on carriers when they "charge and receive as great compensation for a shorter as for a longer distance." The same burden is on the company making a greater charge for one of two hauls of equal distance.

The company defends as legal and reasonable its adjustment of rates, 19 cents on main line and branches south, and 21 cents on branches north, all of which previous to Aug. 1st, 1887, were 22 cents, because other roads made reductions in the rates from Council Bluffs to Peoria and St. Louis. Its competitors at Council Bluffs for Chicago and other business, are subject to the same regulations as the defendant, and with one exception their lines are longer than defendant's line. None of them have advantages over the defendant which enable them to force rates upon it. It has without the pressure of competition other than on equal terms long continued this rate, and as long been making evidence that this 19-cent rate is not unreasonably low. It does not deny that 19

cents is both reasonable and remunerative from Council Bluffs and intermediate main line stations but does deny that there is any unjust discrimination in the difference made between this rate and the two cents greater rate on north branch lines.

One of the north branch lines, the Sioux City and Mapleton line, is a part of a through line between Chicago and Sioux City over which the defendant carries freight to and for Sioux City and for points beyond. It is not shown or claimed that freights to Ida Grove and other points on this Sioux City and Mapleton part of the through line between Chicago and Sioux City, is carried under any circumstances or conditions which make the carrying to these points more expensive or at greater risk than to points equally distant from Chicago on main line, and no reason is found to exist why the charges for substantially the same distances should not be the same on these two lines, the main line and the Sioux City and Mapleton line.

The Kingsley and Merville line, or north branch, is an indirect line 80 miles long terminating at an interior village. At various stations along this line, corn and other freight is collected for transportation to and over the main line. The taking up, carrying over and transferring from this short line must be done at some greater cost than from places equally distant from Chicago on the through lines to Council Bluffs and Sioux City. The complainants aver that transportation from places on both the main line and on Kirkham and Audubon south branch lines, is done under like circumstances as to cost of the service, and that the 19-cent rate on these south branches establishes a rate for like distances on north branches. It can hardly be successfully claimed that the company can maintain a separate equipment and carry from points on these branch lines to the main line for transfer and forwarding, at as low cost as it could take up and carry a like quantity of freight from points equally distant on its main line, as from the points where the freight was taken up on the branches.

Had we found the rates on the south branches something higher for the same distances than on the main line, we

would not for that reason alone disturb them. No complaint is made that 19 cents from Council Bluffs and main-line points is an unreasonable rate, and no complaint is made that the 21 cents is unreasonable on north branches except in comparison with the 19 cents.

The main line of a rival road from Council Bluffs to Chicago crossing the south branches as it, the Chicago, Milwaukee and St. Paul, does, can take the freight at a lower rate with equal profit. From south branch points, defendant must therefore carry at the same rate (19 cents) as the competing or main line of the rival road, to get any share of the business. Here this is done at a rate which yields some profit, not at a loss to be made up from some other business. No legal objection, it is believed, can be urged against its being so done.

The charge or receipt for greater aggregate sums for shorter than longer distances made unlawful by the fourth section of the Act to regulate commerce alleged in the complaint, is denied in the answer. The defendant relies upon a qualifying memorandum or modification endorsed upon its rate sheets, making the long distance rates the maximum, in support of its denial and as evidence of its observance of that section. In this memorandum copied above (No. 4 facts found), "direct line" is used for "same line" in the law. In its effect on shipments from Sioux City to Chicago, it was apparently intended to apply to defendant's line from Sioux City *via* Missouri Valley, on which no greater charges are shown to have been made for shorter than for longer distances.

The claim to observance of the fourth section is justified on the assumption that the route by way of Missouri Valley is defendant's only line between Sioux City and Chicago. This assumption is not warranted by the facts or defendant's course of business which is largely over the route from Sioux City by way of the Sioux City and Pacific road to Onawa, the junction of the Sioux City & Mapleton line, and by that line east to the main line. The general freight agent of the road, a witness, thought Sioux City traffic "in getting to Chicago" was "about equally divided" between these two

routes. Necessarily a greater charge for the shorter distance, the shorter being included in the longer, on either line over which traffic in getting to Chicago from Sioux City, is about equally divided, is in conflict with the fourth section of the Act and the receipt at Wall Lake and the maintenance of a higher rate at Ida Grove and other points on the line by way of Onawa and thence east, was and is contrary to the provision of said fourth section.

The putting in force in December, 1887, from Nebraska points over its main line to Turner and Rochelle, Illinois, a tariff of rates the same from time to time, as the rates over competing roads from the same Nebraska points to Peoria, is admitted in the answer of defendant company and claimed as a part of an arrangement for through traffic in corn from Nebraska to sea-board points. The rates to Turner and Rochelle were shown to be 11 cents per hundred pounds. It is, also, admitted that this rate did not apply at Ida Grove or other Iowa stations not on main line of the defendant's road. Evidence was offered tending to show that it did apply at stations on the main line which was neither denied nor admitted in the answer. The proof is conclusive that it was not in force or available to shippers from Iowa points either on the main line or branches. The same is true of the 36½-cent rate through from Nebraska points to New York put in force February 29, 1888, under which a single shipment was made from Carroll Station, Iowa. Neither does it appear that any shipments were made from Iowa under the tariff taking effect March 5, 1888, between Iowa points and Turner, Illinois, for corn and oats destined to sea-board points. Nor were tariff sheets of such rates, or rates from Nebraska points posted at Iowa stations, nor was the public otherwise notified that such rates were in force or shipments possible at such rates from Iowa points either to Rochelle or Turner, Illinois, or to the sea-board. All the details of this traffic do not fully appear. The tariff sheet taking effect March 5, 1888, directs that grain destined to sea-board points be way-billed to Turner, Illinois, but at different rates as it might or may be destined respectively to various eastern ports. The method of conducting this traffic from Nebraska

was substantially as here indicated. The freight went through without change of cars or re-billing at Turner, to Chicago, where the transfer was made and re-billing was done. Shipping and way-billing to Turner as directed was a shipment to Turner, and such a shipment is in no legal sense a through shipment to the point of ultimate destination at the sea-board. Freight taken and billed from the same place in Nebraska or Iowa, to Turner, Illinois, at lower rates if destined to one place than to another is given an illegal preference. It is claimed by the defendant that these shipments were intended to be through from the place of shipment to the sea-board and that the charge to Turner indicated the defendant's share of the through rate. The complainants insist that the course of business attending the traffic has the appearance of a device to cut legitimate and agreed rates by which the carrier east might give the defendant's line more than its fair division for the carriage west of Chicago. But whether the carrying as it was done to Turner, Illinois, or was, as is claimed, a through carriage to the sea-board, grain growers in Iowa had, and have, a right to share in it on equal terms with those in Nebraska, having due regard to the circumstances, if any, which might vary the reasonable rate from different points of shipment. This was denied to the complainants and they were unlawfully subjected to unreasonable disadvantage in marketing corn.

The complainants have been subjected to losses from defendant's overcharges at Ida Grove and other points on the Mapleton and Sioux City branch line, and by the defendant's refusal to receive and transport to Turner and Chicago, Illinois, corn from Western Iowa in like manner as it received and transported corn from Nebraska. The state of the law as it was at the filing of this complaint gave this Commission no authority to make an award for the losses for which complainants have been subjected by the unlawful acts of the defendant.

The company should so re-adjust its Northwestern Iowa rates as to make them substantially the same to Chicago for approximately the same distances from stations on the company's main line and Sioux City and Mapleton line west of

Maple River Junction and east of Onawa. And should make such further re-adjustments that its compensation shall not be greater in the aggregate for the transportation of passengers or a like kind of property for a shorter than a longer distance in the same direction over its line to Chicago from Sioux City by Onawa and the Sioux City and Mapleton line, or over its line from Sioux City to Chicago by Onawa and Missouri Valley.



THE IMPERIAL COAL COMPANY AND ANDREWS,  
HITCHCOCK & COMPANY, v. THE PITTSBURGH  
& LAKE ERIE RAILROAD COMPANY AND THE  
NEW YORK, LAKE ERIE & WESTERN RAIL-  
ROAD COMPANY, AS LESSEE OF THE NEW YORK  
PENNSYLVANIA & OHIO RAILROAD.

First Hearing, at Washington, July 18th, 1888. Order Made for Additional Testimony to be Taken October 23d, 1888.—Final Hearing, at Washington, January 11th, 1889.—Decision Filed March 23, 1889.

A group rate for a particular district upon a commodity for which a large demand exists, and intended to place producers in the district upon an equality among themselves and with producers of the same commodity from other districts, all competing in a common market, is not unlawful merely on account of differences in the geographical location of different producers and their respective distances from the market.

Actual undue prejudice or damage of which the rate is the cause must result to the more favorably situated producers to render a group rate unlawful.

In determining the question of undue prejudice from a rate, distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, extent and nature of the competition in the business itself and by other transportation lines, and the interests of the public in the use of the commodity and its market cost, are to be considered.

A rate of ninety cents a ton on coal shipped to Lake Erie for a district, covering a radius of forty miles around Pittsburgh, Pennsylvania, embracing a large number of mines of substantially like cost of production and like character of coal, has prevailed since the Act to regulate commerce took effect. The coal from the different mines is in competition at Lake Erie, and is transported over several different and competing lines of railroad, all carrying at the same rate. The coal from the district is also in competition with similar coal from the Hocking Valley district in Ohio, and from other districts. The complainant's mines are near the centre of the district and some mines in competition with them are at a greater distance from the Lake, varying from twenty miles to forty three miles. On all the facts of the case, *Held*, that the rate in itself not being unreasonable it does not appear that it subjects the complainants to undue prejudice, or that it gives an unreasonable preference to the more distant mines.

The question of a greater charge in the aggregate for a shorter than for a longer distance over the same line in the same direction is not to be determined by the proportion allotted to different roads on the line, but by the rate as an entirety.



*John Dalzell*, for Complainants.

*J. H. Reed*, for P. & L. E. R. R. Co.

*Charles Steele*, for N. Y., L. E. & W. R. R. Co.

*H. L. Bond*, for B. & O. R. R. Co.

*J. T. Brooks*, for Penna. Company.

*W. A. Stone*, for Port Royal & Youghiogeny Coal Co.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner* :

The complaint sets out that the Imperial Coal Company is a corporation of the State of Pennsylvania, engaged in the business of mining, shipping, and selling bituminous coal, and that the firm of Andrews, Hitchcock & Company are dealers in coal doing business in the city of Cleveland, Ohio, and purchase large quantities of coal from the Imperial Coal Company and ship the same to Cleveland.

The charge of the complaint is that the rate charged on coal mined and sold by the Imperial Coal Company to Andrews, Hitchcock & Company and others, and shipped to Cleveland, is unjust and excessive, and that there is and has been a discrimination against the Imperial Coal Company and the firm of Andrews, Hitchcock & Company and others dealing with the Imperial Coal Company, in favor of miners and shippers of coal whose freights originate east of the city of Pittsburgh and are delivered in the city of Cleveland and other points.

Said unjust and excessive rate and said discrimination are charged to be as follows : Said Pittsburgh & Lake Erie Railroad Company leases and operates the Pittsburgh, McKeesport & Youghiogeny Railroad, running from the city of Pittsburgh east upwards of forty miles. The said Pittsburgh & Lake Erie Railroad Company makes and charges a uniform rate of 90 cents per ton on coal destined for Cleveland and originating at any point on the said Pittsburgh, McKeesport & Youghiogeny Railroad and the Pittsburgh & Lake Erie Railroad, which is divided between the roads carrying the same as follows :

Pittsburgh, McKeesport & Youghiogheny Railroad Company, 43 miles.....	25 cents.
Pittsburgh & Lake Erie Railroad Company, Pittsburgh to Youngstown, 68 miles.....	32.5 "
New York, Lake Erie & Western Railroad Company, Lessee of the New York, Pennsylvania & Ohio Railroad, Youngstown to Cleveland, 68 miles.....	32.5 "
179 miles.....	90 cents.

On coal shipped from Montour Junction to Cleveland the rate charged is 76½ cents, which is divided between the roads carrying the same as follows:

Pittsburgh & Lake Erie Railroad, Montour Junction to Youngstown, 56 miles.....	36.72 cents.
New York, Lake Erie & Western Railroad, Lessee of the New York, Pennsylvania & Ohio Railroad, Youngstown to Cleveland, 68 miles.....	39.78 "
124 miles.....	76.50 cents.

Petitioners therefore ask that an order be made declaring that the rate charged on coal shipped as aforesaid from Montour Junction to Cleveland is excessive, unjust and unfair discrimination, and that a just and fair rate be fixed therefor.

The answers in substance are that the Pittsburgh & Lake Erie Railroad Company leases and operates the Pittsburgh, McKeesport & Youghiogheny Railroad, for the lease of which latter road it pays a fixed rental not based or dependent upon its earnings, nor does the Pittsburgh, McKeesport and Youghiogheny Railroad receive any portion of said earnings. The two roads form one continuous line and any division of the rate is for the purpose of accounts, and does not affect or concern the shippers over the line of railroad or the leased line of the respondent. That the works of the Imperial Coal Company are located upon the Montour Railroad, a road owned by a company in which some or all of the stock-

holders of the Imperial Coal Company are stockholders, and is operated in the interest of the Imperial Coal Company, which is the only coal shipper on the line of said road. At Montour Junction said railroad connects with the main line of the Pittsburgh & Lake Erie road, and upon all shipments of coal from the works of the Imperial Coal Company to Cleveland a through rate of 90 cents per ton is charged by the three railroad companies, to wit: the Montour Railroad Company, the Pittsburgh & Lake Erie Railroad Company, and the New York, Lake Erie & Western Railroad Company; which is divided between them, the sum of 13½ cents per ton being allowed to the Montour Company. That all the coal mines in the vicinity of Pittsburgh are in the same district and are in direct competition with each other, and that if rates based solely on distance were fixed and charged some of said mines situated within a short distance of others, would be able by the use of different railroads to gain an advantage over such other mines, although in the same region. That the miners of coal who ship to Cleveland for lake shipment are brought into direct competition with the miners who ship to Lake Erie, at Toledo, from what is known as the Hocking Valley region in the State of Ohio; and to enable all shippers in the Pittsburgh region to compete with the Hocking Valley shippers the only practicable method was found to be to fix a uniform rate from the Pittsburgh region so that not only as between themselves but as competing with the Hocking Valley region the coal shippers from the Pittsburgh district might have an equal and fair chance to reach the market.

The material facts are as follows: The Imperial Coal Company is a corporation organized under the laws of Pennsylvania, and owns and operates two extensive coal mines known respectively as the Montour mine and the Cliff mine, located on the Montour Railroad about eleven miles from its junction with the Pittsburgh & Lake Erie Railroad, twelve miles west of Pittsburgh. The Montour Railroad is owned and operated by the stockholders of the Imperial Coal Company, and is used exclusively by that company.

The two mines, which are about three miles apart, embrace about one thousand acres of coal lands, and the whole prop-

erty, including other lands, consists of about three thousand two hundred acres. The entire investment is about one million dollars, which includes all the lands, upwards of two hundred buildings (mostly dwellings), one hundred and two coke ovens, a large car equipment, locomotives, and all things necessary for working the mines. The capacity of the mines is considered to be about fifteen hundred tons a day.

The other mine is located on a road called the Pittsburgh, Chartiers and Youghiogeny Railroad, which also connects with the Pittsburgh & Lake Erie Railroad about six miles nearer Pittsburgh than the Montour road. The mine is located about nine miles from its junction with the latter road at Chartiers. The present capacity of this mine is about five hundred tons a day, which can be increased to one thousand tons a day.

The distance from the Imperial coal mines on the Montour road to Cleveland over the Pittsburgh & Lake Erie road, is about one hundred and thirty-two miles from the Cliff mine, and one hundred and thirty-five miles from the Montour mine, and the distance from the mine on the Chartiers road is about one hundred and thirty-six miles. Pittsburgh is about twelve miles from Montour, so that the distance from Pittsburgh to Cleveland is practically the same as from the complainant's mines.

Coal from the mines was formerly extensively sold at Pittsburgh, Youngstown and the Mahoning Valley in the vicinity of Youngstown, and at intermediate points, but since natural gas has come into general use at those places within the last three or four years the use of coal has been very generally abandoned, except at certain mills in Youngstown, and it is sent to Cleveland and other points on Lake Erie for sale there, and from thence large quantities of it are shipped over the lakes to various places.

The expense of mining coal in the complainant's mines is 74 cents a ton from the first of May to the first of November, and 79 cents a ton during the rest of the year. The price for the work of mining is fixed by the miners. Before prices were so fixed the cost was from 5 to 10 cents per ton less at the complainant's mines. This sum covers only the price

paid the miners for their work. In addition to this there is a considerable expense for what is called dead work, which embraces opening of mines, cost of props, laying roadways, hauling coal, and everything else necessary to get the coal to the cars. This dead work usually amounts to about 30 cents a ton. In complainant's mines, and most of the other mines, the miners are paid by the ton. In a few mines they are paid by the bushel, there being  $26\frac{1}{2}$  bushels in a ton; but the aggregate price amounts to about the same sum. In one mine only two cents a bushel, or 52 cents a ton, is paid.

The rate for the transportation of coal from complainant's mines to Cleveland and other lake ports is 90 cents per ton, which has been the uniform charge since April 1st, 1887. Out of this rate  $13\frac{1}{2}$  cents per ton was allowed and paid to the Montour road for the haul over that road to the junction with the Pittsburgh & Lake Erie road, until July 7th, 1888, when the allowance to the Montour road was increased to 16.65 cents per ton, and the same increased sum was allowed to other mines correspondingly situated on other branch roads.

For the purpose of coal transportation to the lakes the rate is grouped for an extensive district called the Pittsburgh district, including a radius of forty miles around Pittsburgh, and embracing territorially the counties of Allegheny, Beaver and portions of the counties of Washington, Westmoreland and Butler, and taking in small portions of West Virginia and Ohio. The complainants are located near the center of the district. The district contains a very large number of mines owned and worked by different proprietors, and although the coal is all bituminous and of the same general character there are some differences in its quality in different portions of the district, and differences in the character of the mines, that affect more or less the market price of the coal and the cost of production.

Coal exists very abundantly in nearly the whole district, and in many instances the mines are near each other. From the center of the district at Pittsburgh the coal veins become thinner going westward toward the lakes, and thicker going south and east from Pittsburgh. At complainant's mines,

about twelve miles west of Pittsburgh, the veins are about  $3\frac{1}{2}$  to 4 feet in thickness, while at distances of thirty to forty miles east and southeast of Pittsburgh, where some of the mines in the group are located, the veins are 6 feet and 7 feet in thickness, and in some other places 8 or 9 feet in thickness. The thickness of the vein, other things being equal, is of material importance to the value of the mine and the cost of production. A vein 4 feet in thickness will yield about four thousand tons of coal to the acre; a vein 5 feet in thickness will yield about one-third more than that amount, and a vein 8 feet in thickness will yield more than double the amount of a vein 4 feet in thickness.

On the other hand the mines west and northwest of Pittsburgh, containing the thinner veins of coal, have certain advantages which counterbalance to a considerable extent, if not entirely, the thicker veins. They are what are known as drift mines, and are worked horizontally at a saving of expense for machinery, labor and mining appliances. The mines south and east of Pittsburgh, containing the thicker veins of coal, are known as shaft mines, and other items of expense are necessary in working these mines that are not required in the drift mines. Taking the mines of the Port Royal Company as an illustration it is shown that the shaft in this mine is 200 feet deep, and machinery is required for hoisting the coal and water, the roof is more expensive to maintain, more and larger props are necessary, fans operated by steam are used, also Bridis cloth to clear up veins in the entries and carry air in and take gas out, also safety lamps on account of fire damp. Several pumps are required not needed in the drift mines. Considerable more labor is employed, such as additional fire bosses, cagers, and assistants to both, and men to work the hoisting machinery and pumps. The veins of coal also dip in different directions, so that mules can not be used in hauling it. The vein in this mine is from 6 feet to  $7\frac{1}{2}$  feet thick, but from  $1\frac{1}{2}$  to 2 feet at the bottom of the mine is inferior coal of which only a part is sent out, and the balance not used, leaving 5 feet of valuable coal. It is shown that the additional cost of working this mine over the Imperial mine is \$43.85 per day for labor.

The evidence does not show whether all the shaft mines require the same additional expense as the Port Royal mine, although the proof is to the effect that the cost in all the mines, with the exception of three or four, is substantially the same.

The testimony shows that the selling price of coal at the lakes is fixed by an understanding or combination among the various operators, to which nearly all of them are parties.

The price of coal lands enters to a considerable extent into the general cost of production, and much diversity of price was shown to exist. This diversity was caused principally by the distance of the lands from the lines of railroad, and by the thickness or thinness of the veins of coal. As a general rule the price of the lands containing the thinner veins of coal is considerably less than for that containing the thicker veins, and the distance from the line of railroad to which the coal has to be taken largely affects the price. In the locality where the complainant's mines are situated the average price, as nearly as can be gathered from the testimony, is from \$100 to \$150 per acre, while in the Youghiogheny region, where the mines are served by the Baltimore & Ohio road, and where the thicker veins exist, the average price is in the neighborhood of \$300 an acre. The testimony is too indefinite, however, to give the average cost of the different coal lands with any degree of exactness.

The capacity and the actual out-put of the various mines also vary very largely. The testimony generally shows that all of the mines have producing capacity considerably beyond the actual out-put. This applies to the mines in all the different portions of the district.

Coal from the complainant's mines is transported over the following lines of railroad: Over the Montour road 11 miles to its junction with the Pittsburgh & Lake Erie road; thence over the latter 56 miles to Youngstown; and thence over the New York, Pennsylvania & Ohio road, operated by the New York, Lake Erie & Western, 68 miles to Cleveland; the whole distance being 135 miles, and the distance over the defendant roads 124 miles.



At Pittsburgh the Pittsburgh & Lake Erie road connects with the Pittsburgh, McKeesport & Youghiogheny railroad, over which coal is transported from many mines in the grouped district south and east of Pittsburgh to Pittsburgh, and then over the line of the Pittsburgh & Lake Erie and the New York, Pennsylvania & Ohio to Cleveland.

The distances of the various mines in this portion of the district vary. The longest distance is 43 miles from Pittsburgh, and the whole distance from the most remote mine to Cleveland 178 miles, or about 44 miles further than the complainant's mines. The Pittsburgh, McKeesport & Youghiogheny road is under lease to and operated by the Pittsburgh & Lake Erie Company, at a fixed annual rental without regard to earnings, and all the earnings go into the treasury of the Pittsburgh & Lake Erie Company. The proportion of the coal rate of 90 cents a ton allotted to the Pittsburgh, McKeesport & Youghiogheny road is 25 cents a ton.

The proportion of the same rate allotted to the Pittsburgh & Lake Erie Company for the coal originating on the Pittsburgh, McKeesport & Youghiogheny road is 32.5 cents per ton, and the same amount to the New York, Lake Erie & Western Company as the lessee of the New York, Pennsylvania & Ohio Company.

Coal is shipped from twenty-four different mines in the grouped district over the lines of the defendant roads to the two lake ports of Ashtabula Harbor and Cleveland. These mines are located as follows: On the Montour road the complainant's two mines, respectively 132 miles and 135 miles from Cleveland; on the Saw Mill Run Railroad two mines 135 miles from Cleveland; on the Pittsburgh, Chartiers & Youghiogheny Railroad ten mines, varying from 138 miles to 145 miles from Cleveland; and on the Pittsburgh, McKeesport & Youghiogheny Railroad ten mines, varying from 159 to 178 miles from Cleveland.

There are other competing lines of road largely engaged in carrying coal to the lake ports from the same district, and many of the mines that use these competing lines are only short distances apart. Several are only from four to ten miles from complainant's.

The Baltimore & Ohio Railroad, by its own road and its connections, the Pittsburgh & Western Railroad and the Pittsburgh, Cleveland & Toledo Railroad, carries coal from twenty-two mines, seven on the Wheeling & Pittsburgh Division, and fifteen on the Pittsburgh Division, to the two lake ports of Fairport and Cleveland, the distances carried varying from 178 miles to 211 miles. The most distant mines in the Youghiogeny region are reached by this road.

The system of roads operated by the Pennsylvania Company carries coal from twenty-seven mines in the district to the three lake ports of Erie, Ashtabula Harbor and Cleveland, both *via* Pittsburgh and *via* Steubenville, Ohio, the distances *via* Pittsburgh to Cleveland varying from 157 to 175 miles. Of these mines eighteen are on the Pittsburgh, Cincinnati & St. Louis Division, or Pan Handle road, and nine on the Chartiers Division.

Coal is also taken to the lakes over the Allegheny Valley Railroad.

All these lines carry at the same rate of 90 cents per ton, and the coal is all in competition at the lake. Coal is also taken to Buffalo at the same rate.

The rate for coal transportation over the lakes is likewise grouped at all the points of shipment from Buffalo to Toledo.

The coal from the Pittsburgh district is all in direct and sharp competition with the coal of the same general character, but somewhat inferior quality, from the Hocking Valley mines in Ohio. The Hocking Valley district is smaller than the Pittsburgh district, and the distance to the lake points to which the coal is shipped—Sandusky and Toledo—varies from 160 miles to 200 miles, according to the location of the mines. The rate charged for the transportation of the coal is 85 cents a ton, and is grouped for the district. The amount of coal shipped to Lake Erie from the Hocking Valley district was not accurately given, but was stated in general terms to be about two-thirds the quantity shipped from the Pittsburgh district. The respective amounts for the past year were given at 633,000 tons from the Hocking Valley district, and 1,000,000 tons from the Pittsburgh district.

Testimony was given for the purpose of showing that the group rate of 90 cents a ton was fixed by the consent of the several producers of the Pittsburgh district at conferences held with officials of the railroad lines in the early part of March, 1888, and that the purpose was to secure equality of competition with the Hocking Valley coal at the lake ports. A majority of the coal operators examined as witnesses testified that the uniform rate for the grouped district was, as they understood it, assented to by all the operators or their representatives, and was satisfactory. Others, however, deny that such was the case, and claim that the conferences had in view relatively equal rates between the Hocking Valley coal and the Pittsburgh coal. The question of consent to the rate is not, therefore, so satisfactorily proven that it can properly be found as a fact in the case. As the general result of these conferences, however, the 90-cent rate from the Pittsburgh district, which had then been in existence nearly a year, was continued, and the Hocking Valley rate was established at 85 cents a ton.

The mines in competition with complainants, and which it is claimed are worked at materially less expense than theirs—although the claim is disputed by the testimony and the fact does not clearly appear—are the Eureka, the Waverly, the Port Royal and the Ohio & Pennsylvania mines, located on the Baltimore & Ohio road and which ship by that line. The defendant roads are not responsible for the competition of those mines. The only mine on the line operated by the defendants clearly shown to be worked at less cost than the complainant's mines is the Rainbow or Whitsett mine, located about 43 miles southeast of Pittsburgh. The mining cost of this mine, exclusive of dead work, is 52 cents a ton. The testimony is that very little coal is shipped to the lakes from this mine, the output being mainly sold to railroads and to mills at Youngstown and in the Mahoning Valley in the vicinity of Youngstown. The sales at Youngstown are mostly of nut coal and slack.

In the three principal shipping months of August, September and October, 1887, only 19 car-loads were shipped from this mine to the lakes, and none were shipped in the

corresponding months of 1886 or 1888. The shipments from the complainant's mines for the same period were 828 cars in 1887, and 1,044 cars in 1888. The shipments from the Whitsett mine to miscellaneous points beyond Youngstown by the defendant roads were 25 cars in 1887, and none in 1888. The shipments of complainant to the like points during the same months were 31 cars in 1887 and 300 in 1888. The shipments to Youngstown and local points on the Pittsburgh & Lake Erie road from the Whitsett mine by that road were 287 cars in 1887 and 360 in 1888. The corresponding shipments from the complainant's mines were 1,142 cars in 1887 and 1,101 in 1888. The complainant's shipments in these statements are only given from the two mines on the Montour Railroad.

The extent of the competition in transportation of coal from the district to the lake ports and points within a forty-mile radius of Pittsburgh by lines of road other than the defendants' is shown by the shipments of the months of August, September and October, 1888, which were as follows: By the Baltimore & Ohio Railroad to lake ports, 3,737 cars, and to points within group, 1,429 cars; by the Allegheny Valley Railroad, Pennsylvania Railroad, Pittsburgh, Virginia & Charleston Railroad, and Pittsburgh, Cincinnati & St. Louis Railway, and Chartiers Railway to lake ports, 362,244 tons; to points within group, 161,842 tons.

Prior to April, 1887, the equality of rates from the mines in the present grouped district was practically the same as since that date, rebates having been allowed for that purpose. Group rates for the Pittsburgh district, and applying to considerable portions of it where like business is done, are also made by the Pittsburgh & Lake Erie road and the other roads that serve the district, on iron ore, limestone, pig iron, stone, and heavy traffic generally, such as iron manufactures. They also prevail extensively over the Western and Middle States, and apply to class rates as well as to commodity rates. Return freight for the coal cars, consisting principally of iron ore and limestone, is carried by the defendants to Pittsburgh and beyond to the extent of loads for about two-thirds of the cars. Cars intended for complainant's mines take

their return cargoes to Pittsburgh and then go back to those mines.

The question of the lawfulness of a uniform or group rate on coal for the territory embraced in the Pittsburgh district does not involve the reasonableness of the charge from the complainant's mines for the services performed, nor does it present a conflict between the interests of the carriers and of the shippers. The rate is not claimed to be unreasonable in itself for the mines which are nearest the lake ports. The rate per ton per mile for the complainant's mines, a distance of 135 miles, is 6.66 mills, and from Montour junction, since July 7, 1888, 5.92 mills. From the most remote mines on the lines of the defendants, a distance of 178 miles, the rate per ton per mile is 5.05 mills. If the tonnage should remain the same the carriers would be benefited by increased rates in proportion to distance from the other mines to the common destination. In this view the interests of the carriers would be in harmony with those of the complainants. If, however, increased rates based on distance should materially diminish the tonnage, as might be the case, the carriers would lose revenue unless the complainants and the mines in their immediate vicinity necessarily entitled to the same rate, could fully meet the market demand for the kind of coal they produce. This, however, is not claimed, and is not supported by evidence. A demand for coal in excess of the output of the locality in which complainants operate would doubtless invite shipments at higher rates from more distant mines, with the probable, if not necessary, effect of increased price in the common markets to the extent of the additional charge. Shipments from mines charged higher rates would be problematical, however, for the reason that the same markets are reached from numerous other large coal districts served by other lines of road. How much of the large coal business done by the defendant roads is due to the group rate may not be easy to determine, but it is highly probable that the rate secures a large, if not the greater, proportion of the traffic. The effect upon the carriers of advanced rates to different mines or groups of mines more distant than the complainant's cannot be known with certainty, and must be

mostly conjectural. It is not, therefore, so manifestly important as to make the carriers' interests a material element of the question, as in some cases when a carrier must accept a certain rate or lose the business.

The question of the lawfulness or relative reasonableness of the uniform rate to the extent to which it is applied, is to be determined apart from the interests of the carriers, and with regard to the rights and interests of the coal producers in the territory, in view of the conditions of the business disclosed by the testimony. The carriers are the common servants of all the producers and shippers of the coal, and are bound to serve them all reasonably and without unjust discrimination or undue prejudice; but it is not the duty of carriers to disregard distance or natural disadvantages of location, and equalize access to markets for all engaged in a common business though differently situated. It may, however, be lawful and be supported by just public considerations, for carriers to give equal access to markets to localities of dissimilar distances, and it may involve no material difference in expense to the carrier. No producer or shipper has an exclusive right to supply a market, and the interests of consumers and of the general public may justify carriers in enlarging the field from which the demand for a commodity may be supplied on terms of equality for transportation. That is only a recognition of the principle that, the general interests are paramount to individual or local interests.

In other cases it may be unreasonable and therefore unlawful, to give equal rates to diversely situated localities where a demand does not exist for a larger supply, and where conditions intervene that give an undue preference or advantage to the less favorably situated localities.

In all such cases, therefore, the question whether a favorably situated locality is unjustly discriminated against by a grouped rate, or an undue preference or advantage given to the less favorably situated locality, is principally one of fact and not solely of law.

The English Railway and Canal Traffic Act of 1854 contains substantially the same provision on this subject as our statute. Under the English Act the Commissioners and



Courts, after some hesitation, considered questions of this character as questions of fact, to be determined on the evidence in each case, and held that grouping rates was not unlawful unless as a matter of fact the effect was to afford an undue preference. This rule, which has its foundation in reason, and is in the interest of the public, has been repeatedly recognized by this Commission, and was applied in the case of the milk traffic, where the group covered an extent of territory greatly in excess of the district in question. *Howell v. N. Y., L. E. & W. R. R. Co. and others*, 2 Int. Com. Com. Rep., 272.

The new English Railway and Canal Traffic Act, which took effect August 10, 1888, and was framed with extraordinary care, and with all the lights of half a century's experience in railway regulation, makes specific provision for grouping rates in conformity with the rule that had been acted on by the Commissioners and Courts. The enactment is as follows:

"20.—(1) Notwithstanding any provision in any general or special Act, it shall be lawful for any railway company, for the purpose of fixing the rates to be charged for the carriage of merchandise to and from any place on their railway, to group together any number of places in the same district, situated at various distances from any point of destination or departure of merchandise, and to charge a uniform rate or uniform rates of carriage for merchandise to and from all places comprised in the group from and to any point of destination or departure.

"(2) Provided that the distances shall not be unreasonable, and that the group rates charged and the places grouped together shall not be such as to create an undue preference.

"(3) Where any group rate exists or is proposed, and in any case where there is a doubt whether any rates charged or proposed to be charged by a railway company may not be a contravention of section two of the Railway and Canal Traffic Act, 1854, and any Acts amending the same, the railway company may, upon giving notice in the prescribed manner, apply to the Commissioners, and the Commissioners may, after hearing the parties interested and any of the



authorities mentioned in section seven of this Act, determine whether such group rate or any rate charged or proposed to be charged as aforesaid, does or does not create an undue preference. Any persons aggrieved, and any of the authorities mentioned in section seven of this Act, may, at any time after the making of any order under this section, apply to the Commissioners to vary or rescind the order, and the Commissioners, after hearing all parties who are interested, may make an order accordingly."

These provisions are evidently just, and the exercise of the right to group is well guarded. Grouping had been found to be one of the necessities of railway management for the convenience of the traffic and the benefit of the public, and the statute recognizes its propriety and makes provision for its reasonable regulation. The railways of the United States have very often applied the grouping method, especially in the eastern, middle and western States, and if the limitations prescribed by the English Act are observed the method is not unlawful.

In central and eastern Pennsylvania, where anthracite coal is produced, the rates to eastern and western markets are grouped for the different districts from which the coal is taken, although differences in the cost of production from different mines in the same district exist. Large coal districts in Illinois and other western States are also grouped. The entire Hocking Valley district in Ohio is grouped. Rates on grain, flour and other products are also extensively grouped. In the Delaware peninsula, comprising parts of Maryland and Virginia, rates on grain are grouped, but not on fruits, vegetables and other things. In that territory all the lines of railroad are subject to one control, and the regulation of rates is a much simpler matter than where, as in most other places, there are several competing roads and no one road has power to control the business conditions, but a common understanding upon which all can act becomes an apparent necessity of the situation.

In this case the grouped district comprises a radius of forty miles around Pittsburgh. It is probably one of the largest in the United States. The reasons assigned for the common

rate are that the district embraces contiguous beds of coal of substantially the same character, though differing somewhat in quality, some being better for gas and some for steam purposes and some a little softer than others, that the cost of production is about the same throughout the district, the difference in thickness of veins being equalized by the larger expenditure required for working the shaft mines in the thicker veins in the southeastern and eastern portions of the district, than for the drift mines containing the thinner veins west of Pittsburgh, and by the higher cost per acre of the coal lands containing the thicker veins; and that all the coal goes to a common market at the Lake, and is, therefore, competitive. It is further urged that besides being competitive with each other, the mines of this district are all in competition with Hocking Valley coal and coal from other districts, and that a uniform rate bearing just relation to the Hocking Valley rate is necessary to meet this competition. The competition of the various railroad lines engaged in the transportation of the coal is set forth as another and important reason.

On the other hand, while it is conceded that two or more groups of smaller dimensions founded on the size of the coal veins would be reasonable, it is claimed by the complainants, and on behalf of mines similarly situated, that the present group is unreasonable on account of its extent, and the difference in the thickness of the coal veins west and east of Pittsburgh, and that for these reasons an undue preference is given to the more distant mines southeast and east of Pittsburgh. The injurious consequences are said to be stimulated production in the distant mines, largely increased shipments, with ability to sell at lower prices on account of less cost of mining, diminution of production and sales by the nearer mines, depression of prices and actual suspension of operations in some mines.

These results are attributed to the uniform rate as the principal, if not the sole cause, and if it were clear that such consequences are produced, the rate would contravene the limitations under which a grouping system can be sustained.

It is not necessary to consider in detail the various reasons

urged for and against the group rate for this district. A few general considerations will be sufficient for the purposes of the case. It is to be observed that a singular and, perhaps, anomalous condition exists in respect to the production, transportation and sale of coal from this district. The cost in each of these instances is fixed by combinations, and individual freedom of action by the producers, each dealing independently and making the best terms he can for himself, is subject to other controlling influences. The laborers in the mines fix their own compensation, and the operators are obliged, or, at least, deem it for their interests, to comply, to escape the risks and loss of suspension of work. The selling price at the Lake ports and other principal points is fixed by agreement among the producers, presumably for their own protection and to avoid ruinous competition. The rate is fixed by arrangements among the various competing railroad lines engaged in the traffic from this and other districts, ostensibly in the interests of the numerous competing producers, but also with a prudent regard to their own interests. All these circumstances have a more or less important bearing upon the value of mining investments. The profits of the business are dependent on the cost of mining, the cost of transportation, and the selling price. The amount of production, which is a material element in the value of the investment, if a profit is realized at all, is also affected by the same circumstances. If sales are governed by a combination some apportionment of quantities is necessarily involved.

The rate, though a factor of material importance, is only one of the factors entering into the remunerative value of the mining investments. It is the only one, however, of which the Commission has cognizance. Over the others the Commission has no jurisdiction, but whatever responsibility may belong to them can not be imputed to rates.

In making rates the cost of the service is an element, but not the only one or the most important. In this case the rate per ton per mile of 6½ mills, is not, of itself, an unreasonable one for the carriers to charge, nor for the complainants to pay. It presumably affords a fair margin of profit for the

carriers. The rate from the most distant mine on the defendant's system of 5 1-20 mills per ton per mile, is less remunerative to the carriers and more favorable to the shippers, but it is not claimed to entail any loss on the carriers. It probably leaves some profit and is therefore not a burden but a help to the transportation from the nearer mines. If these carriers had no coal transportation except from the mines west of Pittsburgh, it is probable that the volume of traffic would be so much reduced that a higher rate might be necessary. And if the carriers were not able to obtain return loads of ore from the Lake ports, it is doubtful whether the service could be performed at existing rates.

The value of the service is generally regarded as the most important factor in fixing rates. It furnishes theoretically, at least, a foundation for an equitable apportionment that takes into account all interests, those of the carriers, the owners of the property carried, and the public, as well as the dissimilarities of merchandise. But unless a liberal sense is given to value of service, a group rate covering an extended district is affected by other considerations that materially modify the principle. The value of the service to a shipper in a general sense is the ability to reach a market and make his commodity a subject of commerce. In this sense the service is more valuable to a man who transports a thousand miles than to a man who transports a hundred miles, so that distance is an element of the value of service. In a more definite and accurate sense it consists in reaching a market at a profit, being in effect what the traffic will bear to be remunerative to the producer or dealer. If the charge for service leaves no profit to the shipper the traffic is worthless and necessarily ceases. In this case the intrinsic value of the service to a miner forty or fifty miles farther from the common market is greater in proportion to its distance than to the nearer mine, but relatively on account of cost of production, or a somewhat inferior quality, it may be no greater. If the remote mine can not sell at more profit the service has the same value for it, and the traffic will bear no more.

The case demands, therefore, a consideration of the principal grounds upon which the group rate is claimed to be

unreasonable. One is the difference in the thickness of the coal veins. The difference is a conceded fact. The veins in the mines west of Pittsburgh are from one foot to three feet thinner than in the mines south and east of Pittsburgh. This is claimed to increase largely the cost of mining by reason of less coal to an acre, less space for miners to pursue their work, and more expense for removing rock to make necessary room. At first view there seems much force in these suggestions.

The testimony, however, largely disproves the claims based on thickness of coal veins. All the mines that have the thinner veins are drift mines, and those that have the thicker veins are shaft mines, which are shown to require many additional items of expense not necessary in the drift mines. The price of mine labor is practically the same. The price of coal lands is considerably higher where more coal is found to the acre. No difference is shown in the royalties paid where mines are leased, except that being paid by the ton, the amount per acre is greater for thick coal. The cost of production is therefore practically equal in both kinds of mines. The only material exception is the Whitsett mines, where the cost is 52 cents per ton against 74 cents per ton in summer and 79 cents per ton in winter in the others. If it appeared by the evidence that this mine is a material competitor of the complainants at the Lake and in the usual markets, the group rate would give it an undue preference and could not be sustained on just principles. But the facts in evidence show that the competition of this mine is slight and comparatively nominal. Its coal, on account of inferior quality, sells for ten or more cents less per ton. Its total out-put and capacity were not shown. It made no sales at the Lake in the months of August, September and October, 1886, nor in 1888, and only 19 car-loads in the same months in 1887. The shipments to miscellaneous points beyond Youngstown during the same months in 1887 were 25 car-loads, and none in 1888. The shipments to Youngstown and local points on defendants' line during the same months in 1887 were 287 car-loads, and in 1888, 360 cars. In comparison with the shipments from complainant's mines and the general out-put of the mines

that reach the same markets, these shipments are only fractional in quantity. The aggregate sales from the district at the Lake in 1888 are stated at 1,000,000 tons. They are not given at Youngstown and other local points. The general competition, however, from different mines is very great. The product of the Hocking Valley mines in 1886, according to the latest statistics at hand, was nearly 3,000,000 tons, and about 630,000 tons went to the Lake in 1888 from those mines. The total product of the State of Ohio in 1888 was 11,950,000 tons. The out-put of bituminous coal from the Pennsylvania mines in 1888 was 32,500,000 tons, going west as far as the State of Illinois and south through the Mississippi Valley as far as New Orleans. The ascertained deposits of bituminous coal in the United States cover 200,000 square miles of territory, and the total out-put for the year 1888 was about 94,000,000 net tons. These large quantities found markets and many competing lines of road were engaged in the transportation and are still so engaged. New mines are from time to time opened and the general competition largely increases. The futility of attempting to regulate competition so diversified, upon the basis of thickness of coal veins by graduating charges on a single line of road is entirely apparent. The attempt might injure the particular carrier and might exclude a few mines from participation in the traffic, but it could have no appreciable effect on the general competitive business.

Another principal ground upon which the reasonableness of the group-rate is assailed is geographical location. The complainants are about forty miles nearer the Lake and the intervening local markets than the Rainbow mine, the most distant one served by the same carrier, and insist that their natural advantage of location entitles them to a better rate, which if denied constitutes an undue prejudice. This raises the question of mileage rates upon which the Commission has had other occasions to express its views. The Commission has said that it was not the intention of the Act to regulate commerce to establish equal mileage rates; that they are not compulsory, nor always politic; that one effect of such rates would be to put an end to competition as a



factor in making rates, and that it would work a revolution in the business of the country, which, though it might be beneficial in some instances, would be destructive in others. (1 An. Rep., 40.)

While it must be conceded that there is an apparent justice in the claim that rates should be apportioned to distance, it is not an absolute and unconditional right from which a departure may not be justified by other considerations. The public benefits, the greater volume of business to carriers warranting lower rates to all, and the forces of competition by other lines may furnish reasons that outweigh a claim of right founded only on geographical location.

So long as rates are not increased to nearer producers, or kept unreasonably high to put more distant producers on an equal footing, they are not necessarily unjust. But, if the effect of disregarding distance is to impose burdens for the benefit of others on those who have the natural advantage of location, it is unjust and can not be sanctioned.

It is not manifest on the facts of this case that such a result is produced. Evidently, any injury sustained by the complainants is of a nominal character. The rate of the complainants is not unreasonable nor so high as to indicate that it is maintained to afford a lower mileage proportion for the longer distances. The rate for the longer distance probably leaves a profit to the carrier, in connection with return loads for the cars. The competition of the one mine that has the benefit of the same rate for more mileage and with less cost of production, is, as has been seen, comparatively unimportant. The other three mines that are said to be worked at less cost are on the Baltimore & Ohio road which has a mileage of 211 miles to the Lake from those mines. That road is not a party to this proceeding, and can not be included in an order in this case.

The case as presented by the complaint assails only the rate to the Lake, and not to Youngstown or other intermediate points. The defendants were therefore not called upon to justify the reasonableness of the group-rate to those points. Under the complaint the competition of the Lake is alone material in ascertaining the prejudice suffered by the



complainants and the improbability of any substantial prejudice from the one cheaper mine competing over defendants' lines, on account of its limited Lake shipments, has been shown.

The location of the complainants being near the center of the district, they have about forty miles greater distance to the Lake than mines near the western limit of the radius. If, therefore, mileage or geographical location alone were to govern the rate, it would be lower from the mines nearer the Lake than from the complainants', and whatever advantage might be gained in the one instance by a higher rate might be lost in the other by a lower rate.

One of the general conditions of the situation is the fact that coal is a natural product requiring no change of character, but is complete for use in its original state, and is not a commodity created by enterprise and skill. It becomes an article of commerce and of public utility simply by the operation of mining. It has no particular claim to favor arising from invention, expenditure to bring it into existence, process of manufacture, or even locality of deposit.

Coal is, besides, one of the principal necessities of life, indispensable for domestic and numberless business and public uses, and cheap fuel is of no less universal importance than cheap food. It is not in the public interest, therefore, to enhance the cost to consumers generally by preserving special advantages for a few, and it requires a clear and strong case of individual or local right to compel a higher rate upon the general competitive product than upon the out-put from a more favorable geographical locality in order that larger profits may accrue to a very small part of the general supply.

Upon all the facts of the case, any presumption arising from geographical location is so far met as to leave no sufficient ground for finding that the complainants are subjected to undue or unreasonable prejudice. The strong language of the English Court in *Denaby Main Colliery Co. v. The Manchester, Sheffield and Lincolnshire Ry. Co.*, 3 *Railway and Canal Traffic Cases*, 444, is founded solely on distance, and the presumption of preference arising from a disregard of it,

and takes no account of other considerations. One Judge says :

“I think that where you find two collieries are so placed that one is at a much larger distance than the other, and where the question is, what is to be the rate of payment from each of them to the same point, the mere fact of the same charge being made to both to the same point, one being from a larger distance than the other, is *prima facie* evidence of an undue prejudice. It is bringing the colliery, which is naturally at a greater distance, practically as a money matter at the same distance as the other, whereas under ordinary circumstances, the one which is nearer to the given point, which is the market, would be able to carry its goods to that market at a cheaper rate, and therefore be enabled, according to the ordinary rule of trade, to sell at a lower price, and so get a preference. By bringing the other, which is naturally at a larger distance in point of money, to the same distance, you do give that which is at the larger distance a money preference over the other and a market preference over the other, and you take that natural preference from the one which had a natural preference, and so prejudice it.”

The application of such a rule is fatal to any group rate whatever, which as has been seen is sanctioned by the last English statute.

The fact common to all the mines that they are not worked to their full capacity is explained by another reason that appeared in the testimony, and is a matter of general knowledge. The use of natural gas for manufacturing and domestic purposes at Pittsburgh, Youngstown and other places, for the last three or four years has almost entirely displaced the use of coal, and the large supplies of coal previously sold in those places, being no longer required, must find other markets, or not be produced. Causes of such a character affecting production and market prices are subject to no regulation, and no redress can be provided by law. It is said that the fact that natural gas has taken the place of coal to so large an extent is one of the reasons for the group-rate to the lake, that the mines generally might reach a market. As shipments are

not made to the Lake during the winter months, when navigation is closed, the suspension of production in part during that period is a consequence of natural laws for which no carrier can be responsible.

The enormous and perhaps over production of bituminous coal which is incalculably abundant over an immense extent of territory, not only in Pennsylvania, but in many other states, has so greatly increased competition that a diminished and less profitable production in mines that formerly had a substantial monopoly of the trade is an inevitable result, though the superior quality of the Pennsylvania coal maintains a preference for it in most markets. This growing production has led producers to compete with anthracite coal in territory where the latter was formerly exclusively sold, and the bituminous coal by reason of its cheapness has to a considerable extent superseded anthracite coal for steam purposes in New England and other eastern localities. The anthracite producers probably are injured by this competition, but it benefits the country at large.

The competition of the different rail lines engaged in carrying the coal to the Lake is a factor entitled to a fair degree of consideration in dealing with the rates. The defendant roads form only one line. There are two other large systems that are competitors in the traffic from this district, and also other roads that carry considerable coal. The rates both from the Pittsburgh district and from the Hoeking Valley are fixed by agreement among all the roads that participate in the business, in view of competitive rail and coal conditions. They are claimed to be adjusted upon a basis of relative equity. The arrangement is not perfect, but as stated by one of the witnesses is not essentially unjust, and probably produces a maximum of good and a minimum of evil results.

Upon all the facts and circumstances of the case the conclusion of the Commission is that it does not satisfactorily appear that undue or unreasonable preference or advantage is given by the defendants to mines in competition with the complainants at the Lake, nor that the complainants are subjected to undue or unreasonable prejudice or disadvantages.

The question somewhat referred to in the case, of a higher

charge for a shorter than for a longer haul over the same line, and in the same direction, founded upon the larger proportions received by the two roads for the haul from Montour Junction, than from the points south of Pittsburgh, does not present a case of violation of the 4th section of the Act. In cases like this, the rate as an entirety, and not the divisions of it must be relied on to make out a violation of the law, and that is not greater for the shorter than for the longer distance.

The complaint is therefore not sustained.

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COOLEY, *Chairman*:

The controversy in this case, though nominally between producers of coal and carriers, is in fact a controversy between the producers themselves. Within a radius of forty miles about Pittsburgh, are situated a considerable number of mines producing coal not very dissimilar in quality, which is marketed at the same points and is subject to the same competition, coming principally from the Hocking Valley region. To enable them to meet this competition it is stated in one of the answers that in establishing rates for transportation "their only practicable method was found to be, to fix a uniform rate from the Pittsburgh region, so that not only as between themselves but as competing with the Hocking Valley region, the coal shippers from the Pittsburgh region might have an equal and fair chance to reach the market. By this means the largest number of shippers are benefited and are enabled to compete in the open market with other shippers upon fair and equitable terms. Any attempt to introduce differences in rates between shippers of the same commodity from practically the same locality to the same place of destination and for the same market, would have resulted in injury to the majority if not of all the shippers of coal" in the region.

If complainants have any ground for complaint it must be either that the rates charged to them are unreasonably high, or else that the rate charged to competitors in the same region

are so much lower relatively as to make out a case of unreasonable and unjust discrimination. It is scarcely claimed that the rates charged to the complainants are, when considered by themselves, unreasonably high. They are in fact not high, and upon that branch of the case the complaint is clearly not sustained. The question then remains whether there is unjust discrimination in giving to the miners who are at a somewhat greater distance from the common market equal rates with complainants. Upon this it is to be said, that it is now practically conceded on all hands that rates measured strictly by distance cannot at all times be made without serious detriment to business interests in many sections, perhaps in all. It is not possible to establish equal mileage rates without great curtailment of competition, nor without ruining some carriers and many business interests. A great many considerations have weight in the making of rates, and while relative distance is important, it is not always controlling. This is recognized in the Act to regulate commerce, and in rate sheets everywhere.

It is further to be said that there is no reason to believe the carriers intended to discriminate unjustly between the operators by giving equal rates to all concerned. On the contrary the purpose was to put them all, as nearly as possible, on an equal footing in the common market. If the respective distances from the common market were so different that the doing this would deprive some of them of advantages fairly belonging to them, and which they must be supposed to have paid for in purchasing or improving their plants, there might be ground for saying that the equal rates for all were unjust to some. But nothing of the kind appears, and on the contrary the rates, if not as just to all as they could possibly be made, are at least not so plainly wrong as to make out a case of unjust discrimination. The order prayed for should not therefore be made.

MORRISON, Commissioner, concurs in this.

IN THE MATTER OF JOINT WATER AND RAIL  
LINES.

Filed March 1, 1889.

The Act to regulate commerce does not empower the Commission to compel railroad companies to enter into joint arrangements with carriers by water for through carriage at through rates.

The fact that a railroad company makes such joint arrangements for one of its branch roads, will not charge it with unjust discrimination for refusing to make identical arrangements on other parts of its system, when it appears that from such other parts of its system it actually makes through arrangements by a more direct route and at the same rates which are presumptively of equal convenience to shippers.

MEMORANDUM.

The complaint in this case is informal, and the facts are stated in a letter of which the following is a copy :

“ COLUMBIA, S. C., December 17, 1888.

“ MR. D. CARDWELL, Asst. Gen'l Agt., R. & D. R. Co.,

“ COLUMBIA, S. C.

“ DEAR SIR :

“ I have 150 bales of cotton at Winnsboro, (S. C.) which I bought from Messrs. Jones, Robertson & Co. I went there on Saturday to ship it, but your agent refused to give me a bill of lading to New York *via* Columbia and Charleston, claiming that he had no authority to do so. At my solicitation he wired you, but failed to obtain your permission. The Charleston steamers land so much nearer our shores than any other line that it saves us trouble and expense.

“ In a personal interview with you this morning I gave you other good reasons why this particular lot should be shipped as I wish, but still met with refusal. What I asked as a favor I must now request as a right ; a shipper having the right to designate the route by which his goods shall be shipped.”

(Signed by the Complainant).



By the correspondence which accompanies this complaint, it appears that when the cotton was tendered to the agent of the respondent the agent stated that the respondent had no through arrangements or joint rates upon which the shipment by way of Columbia and Charleston could be made from Winnsboro to New York, but that its through arrangements for such shipments were by way of its road to West Point on York River and thence by steamer. The respondent had through arrangements for shipment from points on the Columbia and Greenville division of its system through Charleston to New York, but the explanation was made that those arrangements had been in existence before that branch was acquired, and had simply been allowed to continue. Like arrangements, it is understood, were not made for the towns on respondent's main line, for the reason that the more direct route by way of West Point would be to a larger extent over respondent's road, and therefore more for its interest. The agent to whom the cotton was tendered offered to receive it and forward it on through bill of lading to New York *via* West Point, or, on the other hand, to receive and transport it as local freight to Charleston on the regular rates to that city. Both these offers were declined; complainant insisting upon a through bill of lading by way of Charleston to New York at the same through rate that would be charged by way of West Point. And he now insists that the refusal to give him the through bill by way of Charleston when through bills are given by that route from points on the Columbia and Greenville branch, constitutes unjust discrimination. It should be mentioned that the road from Columbia to Charleston is not a part of the Richmond and Danville system, and is operated independently.

Two questions upon this state of facts seem to be presented: Whether a carrier by rail is under any legal obligation to make through arrangements and join in through rates with carriers by water, and if not, then whether the making of the same for a part of the system and a failure to do so for another and distinct part can be held to be unjust discrimination.

It is to be observed that carriers by water are not in terms



brought under the regulation of the act to which carriers by rail are subject except "when both are used under a common control, management, or arrangement for a continuous carriage or shipment," etc. If the carriers by water see fit to operate independently, no authority is conferred upon the Commission to compel them to do otherwise, and the understanding of the Commission is that by the Act to regulate commerce the carriers by rail are also left at liberty to act independently. They cannot decline to receive from or deliver freight to connecting water lines, but at the same time they are not required by law to make with the water lines joint rates, though they should be expected to do so when they can thereby subserve the interest of the public without detriment to their own interest. The carriers own interest in the present case is evidently to carry the freights by way of West Point, rather than by way of Charleston, since the transportation will be in larger degree over its own line ; and if the business is properly conducted by that route no reason is apparent why the public interest will not be as well subserved.

It is said on behalf of complainant that a shipper is entitled to select the route by which his property shall be forwarded ; but we do not see that this right has been denied by respondent. Complainant directed that his cotton should be forwarded *via* Charleston, and the agent offered to so forward it. But the demand of complainant went farther than this ; it was a demand that the cotton should be taken to New York *via* Charlestown at the same charge that would be made *via* West Point. This was denied on the ground that respondent had no rate from Winnsboro *via* Charlestown to New York, and could therefore give none ; it could only take the cotton as local freight to Charleston at local rates. It is thus seen that it is not the route that is in controversy, but the obligation of respondent to make the same through rate in both directions, when, apparently, it is not for its interest to do so. As already stated, we know of no provision of law which imposes such an obligation.

It is to be observed that if the claim made by the complainant is valid as to shipments from Winnsboro, it must in

law be equally good in behalf of a shipper at a point still further north, say at Richmond, for it would be impossible to designate any particular point on the respondent's line that would be a point of division as between those who must ship by West Point and those who have a right to ship by Charleston. But the reasonableness of such a claim when presented on behalf of a Richmond shipper could scarcely be insisted upon, since it would require long round-about transportation for the same compensation as was charged for one which would be both short and direct.

Complainant assigns as one reason for desiring to forward his freights by Charleston rather than by West Point, that the landing of the Charleston steamers in New York is more convenient to his warehouse. But this is purely an individual matter, and general rules must be made with a view to the general accommodation of the public; they cannot be made or varied to meet the circumstances of particular individuals.

Complainant also objects to the West Point route because of delays and want of promptitude in handling freight which occurs on that line. That, however, is not an objection to the route itself but to the method of transacting business over it, and would perhaps be quite as likely to occur on the Charleston route if the arrangement he desires were made. Obviously the facts stated do not affect the question which the complainant raises, though they might perhaps give complainant a good cause of action in the courts.

## IN THE MATTER OF PASSENGER TARIFFS.

Memorandum. Filed March 27, 1889.

Methods generally adopted by carriers in the preparation and publication of rate sheets, if in substantial compliance with the law, and sufficient for purposes of public information, while not necessarily to be accepted by the Commission as a standard, may be acquiesced in until a better mode can be substituted.

When there is no joint rate in effect from a station on the line of one carrier to a station on another carrier's line, to which a ticket is applied for, it is competent to name a through rate made up of the sums of rates prevailing on the several roads or parts of roads, made use of in the journey; using for such a through rate local rates, where there are no joint rates in effect, and joint rates in combination with locals, where they are in effect for any part of the distance. When no joint rates are announced, it is understood that the local rates are employed in arriving at the through rate.

New individual or joint passenger tariffs must be posted at stations to which they apply, and tickets can legally be sold on combinations of initial or terminal locals therewith.

Mileage, excursion or commutation passenger tickets must be offered impartially to all who accept the conditions on which they are issued, and the rates at which they are sold must be published. The general requirements of the Act to regulate commerce as amended, are as applicable to these classes of tickets as to any others.

Party rates, and passenger carload rates, lower than contemporaneous rates for single passengers, constitute discrimination between persons entitled to transportation at equal rates, and are therefore illegal.

BY THE COMMISSION :

On the 18th day of March, 1889, the Commission received from George H. Daniels, Vice-Chairman of the Central Traffic Association, Passenger Department, a communication from which the following extract is made :

“ I beg to respectfully request an audience before your Commission for the representatives of the various Railway Passenger Associations in the United States, at your office on Thursday, March 21st, if possible, in order that we may submit our present forms of joint rate sheets, and ascertain from your honorable body what, if any, changes will be necessary in the present methods of printing our joint passenger fares.

“ We understand, of course, that the matter of posting

them has materially changed, but we desire to explain to you just how we have been printing these fares in various parts of the country, and to obtain your suggestions in regard to changes that you may wish us to make.

"I have taken the liberty of inviting representatives from the Trunk line, New England, Southern Passenger, Western States Passenger, Transcontinental and International Associations, and will be present myself, with possibly some other representatives of the Central Traffic Association."

Complying with this request the Commission named the 21st day of March, 1889, at its office in Washington as a suitable time and place for a conference, at which time it was attended by a large number of general passenger agents from different sections of the country, and by the officers of several traffic associations. These agents and officers produced specimens of the passenger rate sheets they are accustomed to issue, and an extended discussion was had in regard to their form and in regard also to various other questions pertaining to the passenger traffic.

The rate sheets exhibited are not made up according to any agreed form, or even on any general system; but where they undertake to give rates to points off the lines of the carriers making them, they seem very generally to be united in by several carriers, and sometimes by all of those which serve a particular section of the country, and they then give rates not only to points in that section, but also to those elsewhere. For illustration, the case may be taken of a pamphlet of 81 pages, entitled "Joint Tariff from New York and Basing Tariff for use of Agents in New England," in which seven railroad companies operating what are known as the Trunk Lines unite. The pamphlet gives the rates from New York to some three thousand other points in different sections of the country, from the Atlantic Seaboard to the Gulf of Mexico and the Pacific, and also contains directions whereby through rates to the same points are made from railroad stations in New England. Considerable other information of value to the travelling public is also given, and it may be assumed that this method of giving the public the

information the Act to regulate Commerce intends they shall find in the schedule of rates as published is the result of considerable study and experience, and is supposed to be the best that up to this time has been devised. Many publications made up in the same general way issued by carriers in other sections were laid before the Commission.

It is suggested that the Commission express a general approval of this method unless some legal objection appears. We do not, however, deem it important to do so at the present time. The whole subject of the preparation and publication of rate sheets is a difficult one, and the Commission is inclined to deal cautiously with existing methods which have evidently been adopted in good faith, neither accepting them as a standard when further experience may perhaps suggest a better way, nor disapproving that for which nothing more suitable can at once be substituted. It is well known in railroad circles that the Commission is now in consultation with the traffic managers in the west regarding the preparation and publication of freight rates, and that a good deal of attention has been, and is hereafter likely, to be given to that subject. It may, perhaps, after a time, be thought needful to give special and extended attention to passenger tariffs in the same way, but meantime we shall not deem it important to interfere with the general methods now prevailing, but shall, of course call attention to any particular schedule of rates that shall obviously for any reason appear to be defective.

A number of specific questions were presented while the conference was in progress, and such of them as have not been otherwise disposed of will now be noticed. One general passenger agent inquired:

“What may be done to accommodate individuals in the way of supplying through tickets at through rates from stations at which such through tickets are not usually on sale, and at which the small business does not warrant keeping a stock of tickets, and at which the joint through rates are not quoted?”

This question does not seem to the Commission to present a point of difficulty. Every carrier has its regular local rates

to and from every point on its line, and it is supplied with the rate sheets of connecting lines. If from any one of the stations it unites in no joint rate to a station on another line to which a ticket is applied for, it is always competent to give a rate made up of the sums of rates prevailing on the several roads or parts of roads which must be made use of in the journey the local rates where there are no joint rates, and the joint rates where joint rates less than the sum of the locals are established, for any part of the distance. Thus, if the ticket were desired from an insignificant station on the Michigan Central, to another equally insignificant in Texas, the through rate might be made up perhaps of the local rate to Chicago, a joint rate from Chicago to Memphis, or New Orleans or Galveston, and a local from thence to the point of destination. There would be nothing illegal in making a through rate in that way for any individual traveller, or in giving a ticket or checking baggage for the whole journey with the consent of the several lines; on the contrary it would subserve the public convenience. It has been customary for the carriers to do this in the past, and we have no idea the Act to regulate commerce was intended to preclude its being done hereafter.

In this view the Commission has announced that it would be understood, when no other joint rates are announced, that the local rates are employed in arriving at the through rate. No requirement of posting existing joint tariffs has as yet been made. The requirement is that when changes are made, the advance or reduction shall be notified to the Commission, and made public as required by the law. A new individual or joint passenger tariff must be posted at the stations to which it applies, and tickets can be sold on combination of initial or terminal locals therewith, in the same manner as heretofore.

Another general passenger agent inquires :

" Shall round trip tourist rates be published and posted in the same manner as one way through rates ? "

The Act to regulate commerce as originally adopted pro-



vided in the 22 Section, "That nothing in this act shall apply to \* \* \* the issuance of mileage, excursion or commutation passenger tickets." As amended it now reads, "That nothing in this act shall prevent \* \* \* the issuance of mileage, excursion or commutation passenger tickets." This is a very important change, and must be assumed to have been made for some purpose. One purpose may very well have been to remove any possible doubt whether under the law as it existed before, the general rules of equality, impartiality and publicity prescribed for other cases, were applicable to these classes of tickets to which in terms it was said nothing in the act should apply. Those words of exclusion are no longer in the statute, and the general requirements it makes are as applicable to these classes of tickets as to any others. They must therefore be offered impartially to all who accept the conditions on which they are issued, and the rates must be published as is required in the case of other tickets.

The same officer also inquires :

"Are so-called party rates legal?"

This question brings up a practice which has long prevailed, of giving to theatrical troupes and other similar bodies of persons lower rates when they go in a body than are given to the public generally. Some carriers, however, have gone beyond this, and have advertised party rates for ten or more persons which are considerably below the rates for single passengers. Any ten or more persons it is understood may accept the offer of lower rates by associating together for the purposes of the particular journey, though they may not otherwise be a party, or even be known to each other. This of course affords an opportunity to ticket brokers, who by procuring the requisite number of tickets are enabled to peddle them out at some reduction on the regular rates to single passengers until the number is made up, and at the same time make a satisfactory profit to themselves. Between important cities like Pittsburgh and Philadelphia or St. Louis and Chicago, no reason is apparent why under this system the business of supplying tickets to individual pas-



sengers should not fall for the most part into the hands of the brokers. The practice is vicious in conception and demoralizing in its effects; it necessarily works a discrimination against the single passenger who purchases his ticket at the regular office and in favor of the customer of the broker. Why any carrier should desire to continue it is not obvious. If only one carrier or a few should practice it some advantage might be gained thereby over others, but if all practice it, even this excuse would be wanting. What defense there can be for the practice in law nobody on the conference undertook to point out.

A practice equally vicious and closely acquainted with that of party rates, is the making of passenger car-load rates. Some carriers it is understood make rates considerably below the individual fares when a car is engaged for the carriage of forty or more persons. If, therefore, a number of persons—say twenty—desire transportation between points where a regular rate is in existence, they may perhaps be able to reduce this rate a very large percentage by engaging the car, purchasing the necessary tickets to comply with the regulation, and then selling to others who may have occasion to make the same journey the tickets not required by their own number. This of course affords another opportunity for the ticket broker: he may engage the car himself and fill it with those to whom he sells the forty tickets at a reduction from the regular rate, or he may be employed to fill up the car load by a party less than a full load who have engaged it. No single party is likely to profit so much from such a practice as the party who has no legitimate place whatever in railroad service; the ticket broker; every person to whom he sells a ticket procures it at less than the regular rate, and every person who buys a ticket for the same journey at the carrier's regular office is discriminated against.

If there is any reason upon which such a practice can be defended from the standpoint of the interest of the carrier, it must be that the giving of party and car rates will have some tendency to increase travel, and thereby add to the revenues of the roads. But the tendency in that direction is very slight; it is not likely that the additional revenue derived

as a consequence equals what is lost to the roads in the discount of regular rates. In fact the whole revenue derived from irregular or exceptional methods of dealing with passenger tickets is a very small percentage of the whole pecuniary results of passenger business, and fails altogether to compensate for the demoralization consequent upon such methods. The principal results of the party rates are, that discriminations are made between persons entitled to transportation at equal rates, and that the drain on the revenues of the carriers which the brokers secure in various ways is increased and perpetuated. The remark is legitimate, that when carriers by their methods voluntarily invite such a drain upon what should be their legitimate resources, they furnish strong evidence that their regular rates are higher than they ought to be.

Some other questions were raised in the Conference which are or will be taken up and disposed of in other ways.

## CIRCULAR.

*[Superseding that of March 7, 1889.]*

March 23, 1889.

The attention of carriers is called to the Act of Congress approved March 2, 1889, entitled "An Act to amend 'An Act to regulate commerce.'" The Interstate Commerce Commission has caused the Interstate Commerce Law as thus amended to be printed for general distribution, and will furnish copies on application by mail or otherwise.

Section six, of the act as it now stands contains the following provisions in respect to joint tariffs:

"No advance shall be made in joint rates, fares, and charges shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions in such manner as may, in its judgment, be deemed practicable and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs."

It will be observed that an advance in rates shown upon joint tariffs is forbidden "except after ten days' notice to the Commission," and a reduction in such rates is also forbidden "except after three days' notice to be given to the Commission." The time in each case is to be computed from the day when the notice of advance or reduction reaches the office of the Commission in Washington.

All joint tariffs now filed in the office of the Commission will be understood as remaining in force until due notice of any change is given. When no other tariff is filed the rates on traffic carried over or upon more than one line will be the sum of the local rates of the individual roads, or of local and joint rates, as the case may be.

**The Commission has made order that—**

**“ All advances and reductions in joint rates, fares and charges shown upon joint tariffs established by common carriers subject to the provisions of the Act to regulate commerce shall be made public.**

**“ Every such advance or reduction shall be so published by plainly printing the same in large type, two copies of which shall be posted for the use of the public in two public and conspicuous places in every depot, station or office of such carrier where passengers or freight, respectively, are received for transportation under such schedules, in such form that they shall be accessible to the public and can be conveniently inspected. Such schedules shall be so posted ten days prior to the taking effect of any such advance and three days prior to the taking effect of any such reduction in joint rates, fares and charges.”**

**The amendment to the Act further provides as follows :**

**“ It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.”**

**It is therefore now a criminal offense for any carrier, party to a joint tariff, to participate in the reception of compensation above or below the established rate.**

**Another provision of the Act as amended requires the Commission to execute and enforce the provisions of the Act, and makes it the duty of any District Attorney of the United States, upon the request of the Commission, to institute and prosecute all necessary proceedings for that purpose.**

**The rule heretofore existing, which requires ten days' public notice of any advance in the rates established by individual carriers, is enlarged by adding the following provision :**

**“ Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.”**

**It will be seen that joint tariffs and individual tariffs are now under substantially the same rules. Neither can be reduced without three days' public notice, or advanced without ten days' public notice; and the Commission must also**

be notified of all contemplated changes; individual and joint tariffs alike must be observed in their integrity.

In reference to the application of these provisions of the law to export traffic, the Commission understands that tariffs now on file in its office, established by carriers accepting merchandise billed or intended for export by sea, are made in compliance with its order of the date of March 8, 1888, and whether they be individual or joint tariffs the requirement of notice of any change therein is the same as in the case of other tariffs. Imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freights.

By order of the Commission:

EDW. A. MOSELEY,  
*Secretary.*

[PUBLIC, No. 125.]

## AN ACT

TO AMEND AN ACT ENITLED "AN ACT TO REGULATE COMMERCE," APPROVED FEBRUARY FOURTH, EIGHTEEN HUNDRED AND EIGHTY-SEVEN.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby, amended so as to read as follows:*

"SEC. 6. That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

"Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through

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\*For original Act, see 1 I. C. C. Rep., p. 660.

a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

"No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

"And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedules of rates, fares, and charges as may at the time be in force.

"Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the re-



quirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

"No advance shall be made in joint rates, fares and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

"It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint

rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

"The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

"If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offence may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act."

Sec. 2. That section ten of said act is hereby amended so as to read as follows:

"Sec. 10. That any common carrier subject to the provis-

ions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

" Any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment.

in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

"Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

"If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought

by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom."

Sec. 3. That section twelve of said act is hereby amended so as to read as follows :

"Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and in case of disobedience to a subpoena, the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

"And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or

other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question ; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying ; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding."

Sec. 4. That section fourteen of said act is hereby amended so as to read as follows :

"Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured ; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

"All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports."

SEC. 5. That section sixteen of said act is hereby amended so as to read as follows :

"SEC. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper pro-



cess, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

"If the matters involved in any such order or requirement

of said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty, nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial [of] the findings of fact of said Commission as set forth in its report shall be *prima facie* evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing, then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal pro-

visions, the circuit courts of the United States shall be deemed to be always in session."

Sec. 6. That section seventeen of said act is hereby amended so as to read as follows:

"Sec. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas."

Sec. 7. That section eighteen of said act is hereby amended so as to read as follows:

"Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses sum-

moned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission."

Sec. 8. That section twenty-one of said act is hereby amended so as to read as follows:

"Sec. 21. That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission."

Sec. 9. That section twenty-two of said act is hereby amended so as to read as follows:

"Sec. 22. That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of

Soldiers' and Sailors' Orphan Homes including those about to enter and those returning home after discharge, and arrangements with the boards of managers of said home nothing in this act shall be construed to prevent railroad from giving free carriage to their own officers and employee or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies *Provided*, That no pending litigation shall in any way be affected by this act."

Sec. 10. That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to another shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

APPROVED MARCH 2, 1889.

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Hurlburt *v.* Lake Shore and Michigan Southern R'y Co., 122.

Hurlburt *v.* Pennsylvania R. R. Co., 130.

It is competent to prove by the testimony of witnesses in what sense terms of art or terms peculiar to any occupation or business are used by those engaged in such occupation or business. But when such terms are made use of in a classification sheet to designate the product of a particular employment, they are supposed to be used as understood in that employment, and it is not competent for railroad experts, when the meaning of the classification is in question, to testify in what sense they are understood in transportation circles.—*Ib.*

**PREFERENCE AND ADVANTAGE.**—Without some proof of damage resulting to complainants, the advantage in rates as related to distance is not necessarily undue or unreasonable, no substantial difference in expense appearing to exist.

Howell *et al.* *v.* New York, Lake Erie and Western R. R. Co. *et al.*, 272.

**ADDITIONAL.**—The Commission is not willing to determine the relative reasonableness of rates at any stations, and in a large extent of territory, upon the mere face of tariffs, and without further proof.

Spartanburg Board of Trade *v.* Richmond and Danville R. R. Co. *et al.*, 304.

Where it is obvious that there are many parties interested as directly as is the complainant in the question before the Commission, opportunity will be given them to appear at the taking of evidence.—*Ib.*

A case finally submitted without evidence, ordered adjourned to a future day for the purpose of taking evidence on the principle above stated.—*Ib.*

See **PROOF ; BURDEN OF PROOF ; PREFERENCE AND ADVANTAGE.**

## EXCURSION TICKETS.

**ABUSES IN ISSUING.**—Existing methods respecting excursion and mileage tickets considered and found to lead to various abuses.

*In re Passenger Tariffs and Rate Wars*, 513.

See **MILEAGE TICKETS**.

## EXPORT TRAFFIC.

*Rice, Robinson & Witherop v. Western New York and Pennsylvania R. R. Co.*, 389.

*In re Joint Tariffs*, Circular, 658.

## EXPRESS COMPANIES.

Report of Interstate Commerce Commission, 402.

## FACILITIES OF TRAFFIC.

**EQUALITY IN.**—The Kentucky and Indiana Bridge Company has the chartered powers of a common carrier and is such *de facto*. It is therefore under the Act to Regulate Commerce entitled to demand of railroad companies whose lines are intersected by its tracks, the same reasonable, proper and equal facilities for the interchange of traffic, and for the receiving, forwarding and delivering of property that may be lawfully demanded by other carriers under that Act.

*Kentucky and Indiana Bridge Co. v. Louisville and Nashville R. R. Co.*, 162.

The Louisville and Nashville Railroad Company united with other companies having lines terminating on the Ohio River at or opposite Louisville in a contract, whereby it was agreed that all their business across the river at that point should be taken over the Louisville Bridge. A new bridge being constructed over the river at this point, one of the railroad companies which had contracted to take all its business over the old bridge, transferred the business to the new bridge. The Louisville and Nashville Railroad Company thereupon refused to receive for transportation over its line any freights which had been brought over the new bridge in violation of the contract made with it. *Held*, that this refusal was unlawful.—*Ib.*

A common carrier by rail to which property is offered for transportation cannot in this indirect manner and by refusal to perform obligations imposed by law upon it, enforce its contracts, but must for that purpose resort to the customary remedies.—*Ib.*

Nor can a common carrier as a reason for refusal to afford to another common carrier the customary reasonable and equal facilities for the interchange of traffic, assign the fact that such other common carrier supplies no public necessities, the public having been fully accommodated without it. All railroads created by competent public authority must be conclusively presumed to be public conveniences, and other common carriers cannot refuse to exchange traffic with them on any suggestion or showing to the contrary.—*Ib.*

See **CARRIERS**.

## FACTS.

**DECISION ON.**—A decision on facts does not establish a principle to govern where the facts are different.

*In re Relative Tank and Barrel Rates on Oil*, 363.



**FAST TRAIN SERVICE.**

**MILK TRAFFIC.**—Time of the first importance. Arrangements stated by means of which the delivery of a regular daily supply to all consumers in large cities is accomplished.

*Howell et al. v. New York, Lake Erie and Western R. R. Co. et al.*, 272.

**FEDERAL GOVERNMENT.**

See **IMMIGRANT TRANSPORTATION.**

**FOURTH SECTION.**

See **LONG AND SHORT HAUL CLAUSE.**

**FREE TRANSPORTATION.**

*Griffie v. Burlington and Missouri River R. R. Co.*, in Neb., 301.

*Slater v. Northern Pacific R. R. Co.*, 359.

Report of Interstate Commerce Commission, 411.

**FRUIT.**

*Martin v. Southern Pacific Co. et al.*, 1.

*New Jersey Fruit Exchange v. Central R. R. Co. of New Jersey, et al.*, 142.

*Delaware State Grange, etc., v. New York, Philadelphia and Norfolk R. R. Co. et al.*, 309.

See **DRIED FRUIT.**

**GOVERNMENT-AIDED RAILROAD AND TELEGRAPH LINES.**

Report of Interstate Commerce Commission, 485.

**GRAIN.**

*Logan et al. v. Chicago and Northwestern R'y Co.*, 604.

**GROUP RATES.**

*Business Men's Association of the State of Minnesota v. Chicago, St. Paul, Minneapolis and Omaha R'y Co.*, 52.

*Howell et al. v. New York, Lake Erie and Western R. R. Co. et al.*, 272.

*Rend v. Chicago and Northwestern R'y Co.*, 540.

*Imperial Coal Company et al. v. Pittsburgh and Lake Erie R'y Co. et al.*, 618.

**HEARINGS.****INTERESTED PERSONS MAY APPEAR AT AND BE HEARD.**

*Hurlburt v. Lake Shore and Michigan Southern R'y Co.*, 122.

*Hurlburt v. Pennsylvania R. R. Co.*, 130.

**WHEN NOTICE OF HEARING WILL BE PUBLISHED.**

*In re Chicago, St. Paul and Kansas City R'y Co.*, 231.

**WHEN HELD IN TERRITORY AFFECTED BY LOCAL RATES.**

*Delaware State Grange, etc., v. New York, Philadelphia and Norfolk R. R. Co., et al.*, 309.

See **PARTIES.**

**HUB BLOCKS.**

*Hurlburt v. Lake Shore and Michigan Southern R'y Co.*, 122.

*Hurlburt v. Pennsylvania R. R. Co.*, 130.

## IMMIGRANT CARS.

*Savery & Co. v. New York Central and Audson River R. R. Co. et al.*, 338.

## IMMIGRANT TRANSPORTATION.

*Savery & Co. v. New York and Hudson River R. R. Co. et al.*, 338.  
Report of Interstate Commerce Commission, 462.

## IMPORT TRAFFIC.

*In re* Joint Tariffs, Circular, 658.

## INSPECTION OF CARS.

*Savery & Co. v. New York Central & Hudson River R. R. Co. et al.*, 338.

*Michigan Congress Water Company v. Chicago and Grand Trunk R'y Co.*, 594.

## INTERESTED PERSONS.

See HEARINGS ; PARTIES.

## INTERSTATE COMMERCE.

**WHAT IS NOT.**—Traffic originating in the State of New Jersey and destined to the City of New York, but delivered by the defendant to the consignees at Jersey City in New Jersey, upon which the rates of defendants are made not to New York, but to Jersey City, is not interstate so far as defendants conduct it, and the Commission has no jurisdiction over their rates.

*New Jersey Fruit Exchange v. Central R. R. Co. of New Jersey et al.*, 142.

**WHAT CONSTITUTES.**—Commerce between points in the same State, but which in being carried from one place to another passes through another State, is interstate commerce, and subject to regulation by the provisions of the Act to Regulate Commerce.

*New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co. et al.*, 375.

## INTERSTATE COMMERCE COMMISSION.

**JURISDICTION.**—The Commission has no jurisdiction over the rates of traffic originating in New Jersey and destined to the City of New York when the rates are only made to Jersey City and delivery to consignee is made at that point.

*New Jersey Fruit Exchange v. Central R. R. Co. of New Jersey et al.*, 142.

**INCREASE OF UNREASONABLY LOW RATES.**—The Commission has no power to order rates to be increased upon the ground that they are so low that persistence in making them would be ruinous.

*In re* Chicago, St. Paul and Kansas City R'y Co., 231.

The Act to Regulate Commerce assumes that the carriers, in their power to make rates, have ample remedy to protect against rates which are unreasonably low.—*Ib.*

**IMMIGRANT TRANSPORTATION.**—The matter of the reception of immigrants at the port of New York having been put by the laws of the State under the control of a Board of Commissioners of Emigration, and that Board having made such regulations as it has deemed desirable for the protection of the emigrants until they are ticketed and put on board railroad trains for their respective ultimate destination, and the Federal Government through its Legis-

lative and Executive Departments, having sanctioned the control by the Commissioners of Emigration, the Interstate Commerce Commission has no authority to interfere with their regulations.

*Savery & Co., v. New York Central & Hudson River R. R. Co. et al.*, 338.

Not having the authority to interfere directly and control the Commissioners of Emigration, it cannot do so indirectly by inhibiting the railroad companies from carrying out the arrangement made by the Commissioners with them.—*Ib.*

**COMPLAINT, WHEN NOT FAVORED.**—A complaint made for the purpose of retaliation for a fancied wrong, as to get even with a carrier for the revocation of complainant's pass, does not commend itself to the Commission.

*Slater v. Northern Pacific R. R. Co.*, 359.

**WHEN RE-HEARING WILL NOT BE GRANTED BY.**

*In re* Petition of Produce Exchange of Toledo, 588.

**NO POWER TO COMPEL JOINT ARRANGEMENT BETWEEN WATER AND RAIL LINES.**

*In re* Joint Water and Rail Lines, 645.

**NOTICE OF CHANGES IN JOINT RATES MUST BE GIVEN TO.**

*In re* Joint Tariffs, Circular, 656.

See **ACT TO REGULATE COMMERCE; PRACTICE; REPORT OF INTER-STATE COMMERCE COMMISSION; JURISDICTION.**

#### INTERVENING PARTIES

See **PARTIES.**

#### JOINT ARRANGEMENTS.

Report of Interstate Commerce Commission, 435.

See **WATER AND RAIL LINES; UNJUST DISCRIMINATION; TARIFFS.**

#### JOINT RATES.

*In re* Passenger Tariffs, 649.

**ADVANCES IN.**—*In re* Joint Tariffs, Circular 656.

**REDUCTIONS. IN.**—*Ib.*

See **JOINT TARIFFS; REASONABLE RATES; THROUGH RATES; WATER AND RAIL LINES.**

#### JOINT TARIFFS.

*In re* Tariffs of the Transcontinental Lines, 324.

**FILING AND PUBLICATION OF.**

*In re* Joint Tariffs, 656.

**NOTICE OF CHANGES IN.**—*Ib.*

See **TARIFFS.**

#### JURISDICTION.

*Scotfield et al., v. Lake Shore and Michigan Southern R'y Co.*, 90.  
*New Jersey Fruit Exchange v. Central R.R. Co. of New Jersey et al.*, 142.

*Savery & Co. v. New York Central and Hudson R.R. Co. et al.*, 338.

*New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co. et al.*, 375.

*In re* Joint Water and Rail Lines, 645.

## LIVE STOCK.

*Logan et al. v. Chicago and Northwestern R'y Co.*, 604.

## LOCALITIES.

SEE UNJUST DISCRIMINATION; PREFERENCE AND ADVANTAGE; RELATIVE RATES; REASONABLE RATES.

## LOCAL RATES.

*In re Passenger Tariffs*, 649.

*Delaware State Grange, etc., v. New York, Philadelphia and Norfolk R.R. Co. et al.*, 309.

See REASONABLE RATES; THROUGH RATES.

## LONG AND SHORT HAUL CLAUSE.

DIFFERENCES IN CLASSIFICATION MAY VIOLATE.—Violation of the Fourth Section of the Act can be accomplished by differences in classification as well as by differences in tariff rates.

*Martin v. Southern Pacific Co.*, 1.

RAILROAD COMPETITION.—Canadian competition at the present time does not justify a higher charge from San Francisco to Denver than to Kansas City, it having been withdrawn at the latter point and the Canadian Road now working upon an agreement as to rates with the roads in the United States at all points where it formerly competed.—*Ib.*

The great distance of Denver from the Missouri River, of itself, denotes an impropriety in the charges to that point which exceed those to Kansas City.—*Ib.*

*In re Louisville and Nashville R.R. Co.* (1 I. C. C. R., 81), affirmed and in accordance with the principles there laid down, the conclusion follows that the greater charge for the shorter haul, complained of in the present case, cannot now be justified.—*Ib.*

CIRCUMSTANCES AND CONDITIONS.—The words "substantially similar circumstances and conditions," as found in the 2d and 4th Sections of the Act to Regulate Commerce, in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example: If the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him; or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him; but if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent State Railroad, which is not subject to the Act to Regulate Commerce, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the Statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line.

*Business Men's Association of the State of Minnesota v. Chicago, St. Paul, Minneapolis and Omaha R'y Co.*, 52.

LOCALITIES.—The operation of the Fourth Section of the Act controls the extent to which Missouri River rates extend into the interior of Nebraska and Kansas; Lincoln and other towns lying west of that line must accept their geographical situation and its consequences.

**Lincoln Board of Trade v. Missouri Pacific R'y Co., 155.**

The general plan upon which rates are constructed from Chicago to St. Louis, to Missouri River points and Nebraska points are approved, no better system being as yet suggested. Difficulties which might result from throwing this system into confusion stated.—*Ib.*

**CARRIER CALLED UPON TO JUSTIFY VIOLATION AT PUBLIC HEARING.**—A railroad company which, for cases not apparently affected by water competition or by the competition by carriers not subject to the Act to Regulate Commerce, had issued rate sheets which, in many cases, made for the transportation of like freights the greater charge for the shorter haul on the same line in the same direction, the shorter being included in the longer distance, was called upon to justify such rate sheets at a public hearing.

*In re Chicago, St. Paul and Kansas City R'y Co., 231.*

**RAILROAD COMPETITION BETWEEN TERMINALS.**—The showing by respondent that a competitor for business between the termini of its line makes charges for the transportation of freight which are below what are reasonable and just to the carrier itself, does not alone make out the dissimilar circumstances and conditions entitling the respondent to make charges for the transportation of freights from one terminus to an intermediate station which are greater than those made for the transportation of like freights from the same terminus to the other.—*Ib.*

A leading purpose of the Act to Regulate Commerce is to prevent the giving of unjust preferences and advantages, as between localities, in railroad transportation. This purpose would be defeated if any one carrier, by making an unreasonably low rate to any locality, would thereby entitle all other carriers competing with it to make on their lines greater charges upon the shorter hauls to other stations than were made over the same line in the same direction to the locality thus favored.—*Ib.*

**MILK RATES.**—The existing arrangement by which the same rate is charged for the transportation of milk from all points reached by the regular dairy milk trains of the defendant road found to be not illegal, and on the whole to be the best system that can be devised for the general good of all interested parties.

*Howell et al. v. New York, Lake Erie and Western R. R. Co. et al., 272.*

**BURDEN OF PROOF.**—Where on a question of rates it appears that higher rates are made upon the shorter hauls on the same line and in the same direction, the carrier making them must take the burden of proof to show their reasonableness.

*Spartanburg Board of Trade v. Richmond and Danville, R. R. Co. et al., 304.*

**EXCEPTIONS UNDER, MAY CAUSE VIOLATIONS OF SECOND AND THIRD SECTIONS.**—Discriminations are made and undue advantages are given by the special tariffs in question, in giving different rates to places named and those not named; to manufactured articles named and those not named; to jobbers at places named and those not named; to manufacturers, jobbers and other dealers.

*In re Tariffs of Transcontinental Lines, 324.*

**PROCEEDINGS OF THE COMMISSION UNDER THE FOURTH SECTION STATED.**

Report of Interstate Commerce Commission, 412.

**CONCESSION OF RATES BEFORE DECISION.**—In several cases where a violation of the Fourth Section was complained of, the defendants, before decision was rendered, changed their tariffs so as to give to

Lincoln the same rates from the Pacific Coast that were given to Omaha. As this was all that could be claimed in respect to rates for the future, the Commission abstained from any expression of opinion and gave leave to withdraw the petitions.

Report of Interstate Commerce Commission, 415.

**PASSENGER RATES.**—Reductions in competitive passenger rates cannot be legally made without at the same time reducing intermediate rates, as required by the Fourth Section of the Act.

*In re Passenger Tariffs and Rate Wars*, 518.

**GROUP RATES.**—Group rates may be properly made from a large number of mines composing a coal mining district extending across the State of Illinois, to points in Western Wisconsin, Minnesota and Dakota, the distance from each part of the group by some route being substantially a fair equivalent of the distance of other parts, and commercial necessities being substantially the same for all.

*Rend v. Chicago and Northwestern R'y Co.*, 540.

A reduction of the rates on local shipments from Chicago to the proportion received by the Northwestern lines upon the division of the through rates would involve either a general reduction from the entire group under the short haul clause of the law, or an abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all other interests.—*Ib.*

A group rate is not unlawful merely on account of differences in the geographical location of different producers and their respective distances from the market.

*Imperial Coal Company et al. v. Pittsburgh and Lake Erie R. R. Co. et al.*, 618.

**PROPORTIONS OF RATES TO PARTICIPATING ROADS.**—The question of a greater charge in the aggregate for a shorter than for a longer distance over the same line in the same direction is not to be determined by the proportion allotted to different points on the line, but by the rate as an entirety.—*Ib.*

**THROUGH RATES.**—Through rates are not necessarily illegal which when divided between carriers, give them less than their local rate, *provided* that the through rate itself is not less than some one of the locals or unjustly discriminating against individuals or localities or so low as to burden other business with part of the cost of the business upon which it is imposed.

*Lippman & Co. v. Illinois Central R. R. Co.*, 584.

**DIFFERENT LINES OF THE SAME CARRIER.**—The Chicago and Northwestern Railway Company has two routes or lines between Chicago and Sioux City, formed by its main line and different branch lines, and a greater charge for a shorter than for a longer distance, in the same direction, the shorter being included in the longer distance, on either of said routes or lines, is unlawful under the Fourth Section of the Act to Regulate Commerce.

*Logan et al. v. Chicago and Northwestern R'y Co.*, 460.

#### MALEVOLENCE.

*Michigan Congress Water Company v. Chicago and Grand Trunk R'y Co.*, 594.

#### MILEAGE RATES.

**ON LONG HAULS.**—Business Men's Association of the State of Minnesota *v. Chicago, St. Paul, Minneapolis and Omaha R'y Co.*, 52.

**EQUAL.**—New Orleans Cotton Exchange *v.* Cincinnati, New Orleans and Texas Pacific R'y Co., 375.

Imperial Coal Co. *et al.*, *v.* Pittsburgh and Lake Erie R'y Co. *et al.*, 618.

See REASONABLE RATES; RELATIVE RATES.

### MILEAGE TICKETS.

**ABUSES IN ISSUING.**—Existing methods respecting excursion and mileage tickets considered and found to lead to various abuses.

*In re* Passenger and Rate Wars, 513.

**MUST BE IMPARTIALLY OFFERED.**

*In re* Passenger Tariffs, 649.

**RATES MUST BE PUBLISHED.**—*Ib.*

**APPLICATION OF THE LAW TO.**—The general requirements of the Act to Regulate Commerce as amended, are as applicable to mileage, excursion or commutation tickets as to any others.—*Ib.*

### MILK.

Howell *et al.* *v.* New York, Lake Erie and Western R. R. Co. *et al.*, 272.

### MILLING IN TRANSIT.

**MILLING IN TRANSIT RATES AS PART OF A THROUGH RATE DISCUSSED.**—Chamber of Commerce of the City of Milwaukee *v.* Flint and Pere Marquette R. R. Co. *et al.*, 553.

### MINERAL WATER.

Michigan Congress Water Co. *v.* Chicago and Grand Trunk R'y. Co., 594.

### NOTICE TO COMMISSION.

**OF CHANGES IN JOINT TARIFFS.**

*In re* Joint Tariffs, Circular, 656.

### OIL.

**DANGER OF TRANSPORTATION.**—The danger from transportation of oil through Pittsburgh when apportioned all upon the business is deemed so unimportant as not to materially affect the rates which should be charged.

Parkhurst & Co. *v.* Pennsylvania R. R. Co. *et al.*, 131.

Nicolai *v.* Pennsylvania R. R. Co. *et al.*, 131.

*In re* Relative Tank and Barrel Rates on Oil, 365.

See PETROLEUM.

### PARTIES.

**WHEN INITIAL CARRIER MAY BE MADE SOLE DEFENDANT.**—In a proceeding to correct a classification of freight made by the initial carrier, which freight before reaching its destination must pass over the roads of several carriers, it is proper to make all such carriers parties; but if the initial carrier alone is made defendant, the proceeding is not for that reason defective. An order requiring that carrier to make the correction will be effectual for the purposes of all subsequent consignments, and there is no difficulty in its being complied with without asking the consent of others.

Hurlburt *v.* Lake Shore and Michigan Southern R'y Co., 122.

Hurlburt *v.* Pennsylvania R. R. Co., 130.



**PERSONS INTERESTED NEED NOT BE MADE FORMAL.**—Persons having an interest in a question pending before the Commission will be allowed to appear and be heard when the case is being submitted, without their being made formal parties.—*Id.*

**ABSENCE OF NECESSARY PARTY.**—When a question of rates as between two carriers is involved, the Commission will express no opinion upon it in a case to which one of the carriers is not a party.

*Kentucky and Indiana Bridge Co. v. Louisville and Nashville R. R. Co.*, 162.

**WHO ARE NECESSARY.**—The reasonableness of rates cannot be fairly determined in a proceeding to which some of the parties responsible for such rates are not parties.

*New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific Ry. Co. et al.*, 375.

When the reasonableness of through rates agreed upon by several connecting lines is complained of, it is necessary to make all such lines parties defendant.

*Michigan Congress Water Co. v. Chicago and Grand Trunk Ry. Co.*, 594.

The rule laid down on this subject in *Allen v. Louisville, New Albany and Chicago R. R. Co.* (1 I. C. C. Rep. 199) and in *Harwell et al. v. Columbus and Western R. R. Co. et al.* (1 I. C. C. Rep. 237), and in *Riddle, Dean & Co. v. Pittsburgh and Lake Erie R. R. Co.* (1 I. C. C. Rep. 499), cited and affirmed.—*Id.*

See ACT TO REGULATE COMMERCE; COMPLAINT; PRACTICE.

## PARTY RATES.

**WHEN ILLEGAL.**

*In re Passenger Tariffs*, 649.

## PASSES.

**TO DISCHARGED EMPLOYÉ.**

*Griffie v. Burlington and Missouri River R. R. Co.*, in Neb., 301.

**ANNUAL.**

*Slater v. Northern Pacific R. R. Co.*, 359.

## PASSENGER CAR LOAD RATES.

**WHEN ILLEGAL.**

*In re Passenger Tariffs*, 649.

## PASSENGERS.

**IMMIGRANTS.**

*Savery & Co. v. New York Central and Hudson River R. R. Co. et al.*, 338.

See PARTY RATES; PASSENGER CAR LOAD RATES; RATE WARS; UNJUST DISCRIMINATION.

## PAYMENT OF COMMISSIONS.

See COMMISSIONS ON SALE OF TICKETS; REPORT OF INTERSTATE COMMERCE COMMISSION.

## PETITION.

§ 1 COMPLAINT.

## PETROLEUM.

- Schofield *et al.* v. Lake Shore and Michigan Southern R. R. Co., 90.  
 Parkhurst & Co. v. Pennsylvania R. R. Co. *et al.*, 131.  
 Nicolai v. Pennsylvania R. R. Co. *et al.*, 131.  
*In re* Relative Tank and Barrel Rates on Oil, 365.  
 Rice, Robinson & Witherop v. Western New York and Pennsylvania R. R. Co., 389.

## PIPE LINES.

- Rice, Robinson & Witherop v. Western New York and Pennsylvania R. R. Co., 389.

## POOLING.

- Report of Interstate Commerce Commission, 486.

## PRACTICE.

**THEORY.**—A case cannot be decided on a theory which is neither presented by the complaint nor advanced at the taking of the testimony.

- Martin *et al.* v. Chicago, Burlington and Quincy *et al.*, 25.

**SEPARATE PROCEEDINGS.**—When the evidence presented in the case is insufficient to determine the reasonableness of rates complained of, the Commission will investigate the question in a separate proceeding under the Statute by which all the parties will have opportunity to bring forward all the evidence and be fully heard.

- Business Men's Association of the State of Minnesota v. Chicago and Northwestern R'y Co., 73.

**COLLATERAL INQUIRY.**—When the evidence is introduced for the single purpose of the bearing it may have upon the reasonableness of a rate, which would be inadmissible for any other purpose and presents a collateral inquiry, the carrier not being allowed to controvert it except as to the reasonableness of rates, the Commission will not determine the collateral inquiry until an opportunity has been furnished the parties to be heard in a proceeding such as is provided for by the Statute.—*Ib.*

**PUBLIC HEARINGS.**—In cases of the violation of the Fourth Section not apparently affected by water competition or by competition of carriers not subject to the Act, notice of the hearing was ordered published that competing carriers and the public generally might have opportunity to attend and be heard.

- In re* Chicago, St. Paul and Kansas City R'y Co., 231.

**CASE RETAINED FOR A FURTHER SHOWING.**—On the question of the reasonableness of rates charged for transportation of milk and cream from producing points to Jersey City the case was retained for further evidence.

- Howell *et al.* v. New York, Lake Erie and Western R. R. Co. *et al.*, 272.

**AMENDMENT, WHEN NOT NECESSARY.**—Amendment is not necessary to bring in matters that would have been the subject of proof under the complaint as originally filed.

- Delaware State Grange, etc., v. New York, Philadelphia and Norfolk R. R. Co. *et al.*, 309.

**PLACE OF HEARING.**—A case involving local rates ordered to be heard at a central point in the territory immediately affected by the rates.—*Ib.*

**CONCESSION OF RATES BEFORE DECISION TERMINATES THE CONTROVERSY.**—Report of Interstate Commerce Commission, 415.

**DECISION.**—In deciding a case against one or more carriers who are charged with making rates which are unjustly discriminating in a certain line of traffic, the decision made upon the facts of a particular case does not necessarily govern rates in other sections of the country where the facts bearing upon them may be altogether different.

*In re* Relative Tank and Barrel Rates on Oil, 365.

**REHEARINGS.**—After a complaint has been heard and determined by the Commission and no party to the proceeding has applied for a rehearing, an application for a rehearing made by others who are not parties to the proceeding will not be granted.

*In re* Produce Exchange of Toledo, 588.

If upon a new or different complaint it should appear that any conclusion of the Commission in the case so decided has been erroneous, the Commission would feel it to be a duty to correct such conclusion.—*Ib.*

See **PARTIES ; INTERSTATE COMMERCE COMMISSION ; COMPLAINTS.**

### PREFERENCE AND ADVANTAGE.

**DRIED FRUIT AND RAISINS.**—Classification of dried fruit and raisins, both California products, in different classes, taking different rate, works an injustice to shippers.

*Martin v. Southern Pacific Co. et al.*, 1.

**BETWEEN LOCALITIES.**—The fact that under rates which are impartially arranged as between large and small towns one large distributing center may have an advantage over another in competition for the business of the small towns, does not make out a case of undue preference in favor of one distributing center as against the other. Impartial rates are not rendered illegal by their effect upon the business of localities.

*Martin et al. v. Chicago, Burlington and Quincy R. R. Co. et al.*, 25.

**WHAT CONSTITUTES UNLAWFUL.**—To render a preference of one over another unlawful, under the Act to regulate Commerce, it is not necessary that it should be accomplished by any "device" and it is equally true that the ingenuity of man cannot invent a device for the perpetration of an unlawful preference on the part of a carrier engaged in interstate commerce without incurring the penalties prescribed by the Statute.

*Scofield et al. v. Lake Shore and Michigan Southern R'y Co. et al.*, 90.

**TRANSPORTATION OF PETROLEUM OILS.**—Upon the facts of this case it is found and held that there is an unlawful preference given by the carriers in favor of oil shipments in tank car lots, as against like shipments in barrels car load lots which is ordered to be corrected, and the mode prescribed by which this must be done, giving equal rates upon each per pound.—*Ib.*

**WHAT DOES NOT AFFECT THE QUESTION.**—Municipal subscriptions or gratuities do not affect the question of undue preference under Section Three of the Act to regulate Commerce.

*Lincoln Board of Trade v. Burlington and Missouri River R. R. Co., in Neb. et al.*, 147.

**DISPARITY IN RATES.**—Disparity in existing rates to Lincoln and Omaha found to correspond closely with the difference in distance that no change is required on that ground.—*Ib.*

**UNREASONABLY LOW RATES.**—A leading purpose of the Act to Regulate Commerce is to prevent the giving of unjust preferences and advantages, as between localities in railroad transportation. This purpose would be defeated if any one carrier by making unreasonably low rates to any locality would thereby entitle all other carriers competing with it to make on their lines greater charges upon the shorter hauls to other stations than were made over the same line in the same direction, to the locality thus favored, 231.

**WHEN UNDUE AND UNREASONABLE.**—Preference and advantage become undue and unreasonable when the results are such as to affect some tangible injury to the complaining parties.

*Howell et al. v. New York, Lake Erie and Western R. R. Co. et al.*, 272.

**PROOF OF DAMAGE NECESSARY.**—Without some proof of damage resulting to complainants, an advantage in rates as related to distance is not necessarily undue or unreasonable, no substantial difference in expense appearing to exist.—*Ib.*

**FREE TRANSPORTATION OF PERSONS.**—Where a free pass is given to a discharged employé of the company on the assumption that he might still be regarded as an employé, but which was never used, and expired by limitation in the hands of the party to whom it was issued and which was produced before the Commission as an unused instrument in a proceeding in which complaint of its issue was made. *Held*, that the facts did not show that a breach of the third Section of the Act had been committed, no free transportation whatever having been had, and the party being entitled to none, according to the terms of the instrument as it then was.

*Griffie v. Burlington and Missouri River R. R. Co.*, in Neb., 301.

**RELATIVE RATES.**—Rates must be relatively fair and reasonable as between localities in essential respects similarly situated, not according to any rule of mathematical precision, but in substance and in fact, having regard to the geographical and relative positions of the localities, so that one will not be favored to the unjust prejudice of the other.

*Detroit Board of Trade et al. v. Grand Trunk R'y of Canada et al.*, 315.

A tariff naming a rate from one locality lower than that enjoyed by its neighbor, when the circumstances are the same, tenders a preference or advantage to the first, and when any shipper is damaged by the exaction of an additional burden, the preference becomes undue and unreasonable, unless it can be justified upon some sound and substantial ground.

*In re Tariffs of Transcontinental Lines*, 324.

**GROUP RATES ON COAL.**—Through rates by way of Chicago to points in Western Wisconsin, Minnesota and Dakota, from mines in the eastern part of a coal mining district extending across the State of Illinois are necessarily made the same with the group rates established on other routes from the same district, and their discontinuance would simply leave the market open to the product of other Illinois mines at the same transportation charged.

*Rend v. Chicago and Northwestern R'y Co.*, 540.

Under the exceptional circumstances requiring such through rates, shippers locally from Chicago of Ohio and Pennsylvania coal cannot justly insist upon rates no higher than the division of such through rate which appertains to the lines running northwest from that city, the circumstances under which the through rate is made being such that it cannot be differently adjusted.—*Ib.*

Such a reduction of the rates on local shipments from Chicago would involve either a general reduction from the entire group under the short haul clause of the law, or abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all interested. Under such circumstances the preference is not undue nor is the advantage complained of unreasonable.—*Ib.*

**DIFFERENCES IN THROUGH RATES.**—The difference between proportions of through rates along the same line should be fairly reasonable in amount and properly guarded in their application, and not such as to injure or suppress business in one locality in order that it may be stimulated and built up in another.

Chamber of Commerce of the City of Milwaukee *v.* Flint and Pere Marquette R. R. Co. *et al.*, 553.

**TRANSPORTATION OF MINERAL WATER.**—On complaint of unreasonable rates, *Held*, that neither the defendant nor any of its officers or agents have been engaged in combinations with connecting lines or other parties to prevent complainant from obtaining reasonable rates and facilities for the transportation of its mineral water or to give other mineral waters a preference in rates and facilities over those accorded to complainant.

Michigan Congress Water Co. *v.* Chicago and Grand Trunk R'y Co., 594.

**MALEVOLENCE.**—That defendants, officials and agents have not acted in a malevolent spirit towards complainants in throwing obstructions in the way of its transporting mineral water over defendants' line and its connecting lines.—*Ib.*

**IN SHIPMENTS OF CORN.**—Defendant's Tariff Sheet in force from Nebraska points to Turner, Illinois, directed corn destined to the seaboard to be billed to Turner at different rates when destined to different seaboard points. The corn was carried from Nebraska to Chicago, where the re-billing and transferring was done. No shipments could be made under this tariff from Iowa points. *Held*, that as billed, the shipment was to Turner; that by billing at different rates to Turner an illegal preference was given, and that Iowa grain growers were subjected to unreasonable disadvantages in marketing corn.

Logan, T. M. C. *et al.* *v.* Chicago and Northwestern R'y Co., 604.

**GROUP RATES ON COAL.**—On complaint of a group rate on coal from a district covering a radius of forty miles around Pittsburgh, *Held*, that the rate in itself not being unreasonable it does not appear that it subjects the complainants to undue prejudice, although it gives an unreasonable preference to the more distant mines.

Imperial Coal Company *et al.* *v.* Pittsburgh and Lake Erie R. R. Co. *et al.*, 618.

Actual undue prejudice or advantage of which the rate was the cause must result the more favorably situated producers to render a group rate unlawful.—*Ib.*

**CONSIDERATIONS WHICH AFFECT THE QUESTION.**—In determining the question of undue prejudice from a rate, distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, extent and nature of the competition in the business itself, and by other transportation lines, and the interest of the public in the use of the commodity and its market cost, are to be considered.—*Ib.*

See ACT TO REGULATE COMMERCE; UNJUST DISCRIMINATION; LONG AND SHORT HAUL CLAUSE.

## PRESUMPTION.

SEE PROOF; BURDEN OF PROOF.

## PROOF.

**PREFERENCE AND ADVANTAGE.**—Without some proof of damage resulting to complainants, an advantage in rates as related to distance is not necessarily undue or unreasonable, no substantial difference in expense appearing to exist.

*Howell et al. v. New York, Lake Erie and Western R. R. Co. et al.*, 272.

**REASONABLE RATES.**—The Commission will not determine the relative reasonableness of rates at many stations and in a large extent of territory upon the mere face of tariffs, without further proof.

*Spartanburgh Board of Trade v. Richmond and Danville R. R. Co. et al.*, 304.

See **BURDEN OF PROOF; EVIDENCE.**

## RAILROAD COMPANY.

See **CARRIERS.**

## RAILROAD INTERESTS.

## UNITY OF.

Report of Interstate Commerce Commission, 434.

## RATES.

## COMBINATION.

*Martin v. Southern Pacific Company*, 1.  
*In re Passenger Tariffs*, 649.

## SINGLE.

*Martin et al. v. Chicago, Burlington and Quincy R. R. Co. et al.*, 25.

LOCAL AND THROUGH CONSIDERED.—*Ib.*

*Business Men's Association of the State of Minnesota v. Chicago, St. Paul, Minneapolis and Omaha R'y Co.*, 52.

*Business Men's Association of the State of Minnesota v. Chicago and Northwestern R'y Co.*, 73.

## GROUP.

*Business Men's Association of the State of Minnesota v. Chicago, St. Paul, Minneapolis and Omaha R'y Co.*, 52.

*Howell et al. v. New York, Lake Erie and Western R'y Co. et al.*, 272.

*Imperial Coal Co. et al. v. Pittsburgh and Lake Erie R. R. Co. et al.*, 618.

*Rend v. Chicago and Northwestern R'y Co.*, 540.

## MUST BE EQUAL AND OPEN.

*In re Tariffs of Transcontinental Lines*, 324.

## PASSENGER.

*In re Passenger Tariffs and Rate Wars*, 513.

## THROUGH, DEFINED.

*Chamber of Commerce of the City of Milwaukee v. Flint and Pere Marquette et al.*, 553.

MILLING IN TRANSIT.—*Ib.*

**SPECIAL, PRIOR TO THE ACT.**

*Myers' Survivor v. Pennsylvania Co. et al.*, 573.

See CONCESSION OF RATES; JOINT RATES; REASONABLE RATES; RELATIVE RATES; PREFERENCE AND ADVANTAGE; UNJUST DISCRIMINATION; LONG AND SHORT HAUL CLAUSE; REASONABLE RATES.

**RATE SHEETS.**

*In re Chicago, St. Paul and Kansas City R'y Co.*, 231.

*Hurlburt v. Lake Shore and Michigan Southern R'y Co.*, 122.

*Logan, J. M. C., et al. v. Chicago and Northwestern R'y Co.*, 604.

*In re Passenger Tariffs*, 649.

See LONG AND SHORT HAUL CLAUSE.

**RATES UNREASONABLY LOW.**

**COMMISSION WILL NOT PROHIBIT.**—The First Section of the Act does not render rates that are unreasonably low illegal in a sense that will authorize the Commission to prohibit their being made.

*In re Chicago, St. Paul and Kansas City R'y Co.*, 231.

The Commission has no power to order rates increased upon the ground that they are so low that persistence in making them would be ruinous.—*Ib.*

**CONSIDERED AND DISCUSSED.**

Report of Interstate Commerce Commission, 424.

**RATE WARS.**—A passenger rate war in which rates were repeatedly reduced by several competing lines to an exceedingly low basis on a particular class of traffic, without any filling of tariffs, was contrary to the requirements of law, as well as against the true interest of each party thereto.

*In re Passenger Tariffs and Rate Wars*, 513.

No necessity or compulsion is created by war of rates which justifies disobedience of the Statutes.—*Ib.*

See UNJUST DISCRIMINATION.

**RATE WARS.**

See REPORT OF INTERSTATE COMMISSION; RATES UNREASONABLY LOW.

**REASONABLE RATES.**

**TO SMALL AND LARGE TOWNS.**—A distributing center, however great or important, cannot demand as a matter of right that the rates from a common source of supply to more distant and smaller towns shall be made up of the sum of the rate to itself, and the rate thence to such smaller towns; but the carriers may make rates from the common source of supply to the smaller towns directly as single rates; and if the single rate is less than the sum of the two which are made to and from the distributing center, it is not for that reason necessarily objectionable.

*Martin et al. v. Chicago, Burlington and Quincy R. R. Co. et al.*, 25.

**PRINCIPLES RELATING TO.**—One feature of the transportation of freight by railroads in long hauls on joint rates, or what is usually called through rates, unless there be exceptional conditions which modify the rule, is that the rate per ton per mile grows less in the proportion to the greater distance, while the aggregate of the rate increases in proportion to such greater distance; but this is not found to



exist in the case of the local rates of a railroad, where the stations are occasionally grouped, but more usually graded according to distance, except as an incident of rare and highly exceptional conditions of the transportation service.

Business Men's Association of the State of Minnesota *v.* Chicago St. Paul, Minneapolis and Omaha R'y Co., 52.

The method of testing the freight rates of a railroad by the rate per ton per mile does not take into consideration the surrounding circumstances and conditions that enter into the making of the rate, and for this reason it cannot be considered a controlling rule in determining the reasonableness of rates.—*Ib.*

In determining the reasonableness of any freight rate all the surrounding circumstances and conditions must be considered as well as the rights of the shippers.—*Ib.*

**COMPARISON WITH EXCEPTIONAL RATES ON OTHER PORTIONS OF THE LINE.**—Exceptional rates caused by competition and not illegal under the Act to Regulate Commerce cannot be adopted as a standard by which to measure other rates on the same line where the exceptional conditions do not exist.—*Ib.*

Business Men's Association of the State of Minnesota *v.* Chicago and Northwestern R'y Co., 73.

**COMPARISON WITH RATES OF OTHER CARRIERS.**—Comparison of rates charged by railroad companies under circumstances and conditions substantially dissimilar, proves nothing and cannot be adopted as standard in arriving at the reasonableness and justness of rates.—*Ib.*

**RESPONSIBILITY OF CARRIERS OWNING THROUGH LINES.**—When railroad companies make a through and continuous line and offer it for the use of the public, they cannot rid themselves of responsibility for unjust charges by breaking the whole in two and calling themselves carriers from the severed end of their through lines.

Parkhurst & Co. *v.* Pennsylvania R. R. Co. *et al.*, 131.

Nickolai *v.* Pennsylvania R. R. Co. *et al.*, 131.

The Pennsylvania R.R. Co. operates a part of a through line which it joins in making and owns a controlling interest in the capital stock of the Pittsburgh, Cincinnati and St. Louis R'y Co., by which the other parts is operated. *Held*, That the Pennsylvania R. R. Co. cannot free itself from the responsibility of excessive through rates by getting behind the corporate existence of the other company as a separate carrier.—*Ib.*

**PROPORTIONS OF THROUGH RATES.**—The apportionment of rates to different parts of a through line do not determine the charge to the public, but may be significant on the question of reasonable rates for the whole distance.—*Ib.*

**PRINCIPLES RELATING TO.**—Principle that the ratio of rates should decrease with the increase of distance conceded, but modifying conditions often exist; some of them stated; as applied to the facts in this case no change in rates required.

Lincoln Board of Trade *v.* Burlington and Missouri R. R. Co., in Neb., 147.

Distance by shortest route is properly to be considered in determining the propriety of rates by a longer competing line.

Lincoln Board of Trade *v.* Missouri Pacific R'y Co., 155.

**PROFITABLE RATES MAY NOT BE UNJUST.**—Proofs that certain rates are very profitable to the road, and that they are higher than the rates

charged on certain other somewhat similar commodities is not of itself of a sufficient ground for determining either that such rates are unjust or what rates would be just and reasonable for the traffic in question.

Howell *et al.* v. New York, Lake Erie and Western R. R. Co. *et al.*, 272.

**WHAT SHOULD BE CONSIDERED IN DETERMINING.**—A question of reasonable rates cannot be properly decided without full knowledge of all the facts concerning the particular traffic in question, and its relations to the other traffic of the carrier. Some of the elements stated which are necessary and proper to be considered.—*Ib.*

**GROUP RATES ON MILK.**—Grouping of milk rates over large extent of territory not shown to injuriously affect the producers who complain; their product is not reduced in value nor is any part of it left unsold, while the requirements of consumers demand a steadily increasing area of supply.—*Ib.*

**NOT NECESSARILY PROPORTIONATE TO DISTANCE.**—On freight hauled through the cities of Detroit and Chicago to and from the Northwestern States and Territories and the seaboard or New England points, the rule invoked by the petitioners that an estimated portion of the through rate as between the points of origin of the freight and Detroit, must not be lower in proportion to distance than the rate upon the freight from such points of origin destined to Detroit, is one that cannot be sustained.

Detroit Board of Trade *et al.*, v. Grand Trunk R'y of Canada, *et al.*, 315.

**WHEN RATES ARE PRIMA FACIE JUST AND REASONABLE.**—Rates that are just and reasonable from selected manufacturing points, through the entire territory east of the Missouri river and west of the Atlantic seaboard, are *prima facie* just and reasonable from all other points in the same territory.

*In re* Tariffs of Transcontinental Lines, 324.

See RATES; UNJUST DISCRIMINATION.

**SMALL EARNINGS DO NOT JUSTIFY EXCESSIVE.**—In determining what are reasonable rates the fact that a road earns a little more than operating expenses is not to be overlooked, but it cannot be made to justify grossly excessive rates.

New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R'y Co. *et al.*, 375.

**PARTIES.**—The reasonableness of rates cannot be fairly determined in a proceeding to which some of the parties responsible for such rates are not parties.—*Ib.*

**CIRCUMSTANCES AND CONDITIONS.**—In arriving at what is a just and reasonable rate on freight transported by a carrier on a short local line having but a small volume of business, where the cost of transportation is exceptionally great, arising from steep grades, sparse population and like traffic, these are circumstances and conditions of controlling weight in the making of rates and cannot be overlooked when a question of their reasonableness is involved.

Rice, Robinson & Witherop v. Western New York and Pennsylvania R. R. Co., 389.

Under the exceptional circumstances requiring through rates, shippers locally from Chicago of Ohio and Pennsylvania coal cannot justly insist upon rates no higher than the division of a through

rate from Illinois mines, which appertains to the lines running northwest from that city, the circumstances under which the through rate is made being such that it cannot be differently adjusted.

*Rend v. Chicago and Northwestern R'y Co.*, 540.

**ON LONG HAULS.**—Where a rate is in itself a through rate and made up of percentages to an intermediate point on a long haul, the circumstances and conditions of transportation must be rarely exceptional indeed to be of such controlling force as to warrant any considerable excess of such a rate in amount over a percentage of a through rate for an equal distance along the same line by way of the same point to a more distant point.

*Chamber of Commerce of the City of Milwaukee v. Flint and Pere Marquette R. R. Co. et al.*, 553.

**FORMER PREFERENTIAL RATES NOT A FAIR TEST.**—A former special and preferred rate is not a fair test of the reasonableness of a present rate.

*Myers, Survivor, v. Pennsylvania Company et al.*, 573.

**LOCAL AND THROUGH BUSINESS.**—A railroad company is under special obligation to give reasonable rates for its local business, but there are many influences which may affect through rates while not bearing upon local rates at all, or if at all, in less degree.

*Lippman & Co. v. Illinois Central R. R. Co.*, 584.

**RATES AT OTHER POINTS WILL BE CONSIDERED.**—In determining the reasonableness of rates at one point which are the same at other points not far distant on the same system of railroads, the Commission will consider the bearings and relative equality of rates at all of the points so situated.

*In re* Petition of the Produce Exchange of Toledo, 588.

**ON DIFFERENT BRANCHES.**—Two of the south branch lines of the Chicago and Northwestern R'y Co. are crossed by the main line of the Chicago, Milwaukee and St. Paul R'y Co. From points on these branch lines the Northwestern Company comes in competition with the St. Paul Company from its main line points. *Held*, That the charges on these branches do not establish a standard of reasonable rates for like distances from points on a north branch of the same company, where no such competition exists.

*Logan et al. v. Chicago and Northwestern R'y Co.*, 604.

See ACT TO REGULATE COMMERCE ; PREFERENCE AND ADVANTAGE ; RATES UNREASONABLY LOW ; UNJUST DISCRIMINATION ; CLASSIFICATION ; RATES ; LONG AND SHORT HAUL CLAUSE.

#### REHEARINGS.

**APPLICATION FOR BY OUTSIDE PARTIES.**—588.

See PRACTICE.

#### RELATIVE RATES.

**PROOF REQUIRED.**—The Commission is not willing to determine the relative reasonableness of rates at many stations, and in a large extent of territory, upon the mere face of tariffs, and without further proof.

*Spartanburg Board of Trade v. Richmond and Danville R. R. Co. et al.*, 304.

**BETWEEN LOCALITIES.**—Rates must be relatively fair and reasonable as between localities in essential respects similarly situated.

Detroit Board of Trade *et al. v. Grand Trunk R'y Co. of Canada et al.*, 315.

Where a system of rates is made by a number of carriers covering a widely extended territory which seem to be reasonable in themselves and relatively fair so far as the evidence in this case shows, the Commission will not order them to be changed at one important point, thereby rendering other changes unavoidable at a large number of other points, and throwing the rates of the entire system into confusion and unsettling values, unless a case arises in which it is necessary that this should be done in order to enforce compliance with the law and to reach the ends of substantial justice.—*Id.*

**ADJUSTMENT OF.**—Whether railroad companies combine or act separately in making rates and charges is not so important, the essential requirement is that however made they shall be reasonable of themselves and so fairly adjusted as to be reasonable in their relations to each other and in their results.

New Orleans Cotton Exchange *v. Cincinnati, New Orleans and Texas Pacific R'y Co. et al.*, 375.

Through rates admit of very great variety in the forms they assume; and such rates, when reasonable and fairly adjusted in their relations to local business are greatly favored in the law, because they furnish cheapened rates and greater facilities to the public, while at the same time, they give increased employment and earnings to a larger number of carriers.

Chamber of Commerce of the City of Milwaukee *v. Flint and Pere Marquette R. R. Co. et al.*, 558.

The question of relative injustice must be viewed upon broader grounds than a mere balancing of one rate against another. A reduction which will throw into confusion an adjustment of rates over a large section of country which are not claimed to be unreasonable of themselves, should not be required without a clear right thereto exists under some direct provision of the law.

Rend *v. Chicago and Northwestern R'y Co.*, 540.

**ON COMPETING LINES.**—Where a change of rates, for example those on the defendant's line in this instance, would involve a reduction of rates on the Dunkirk, Allegheny, Pittsburgh and other competing lines not parties to this proceeding, and unsettled relative rates, in a large extent of territory, such a change ought not to be made unless based upon adequate grounds.

Rice, Robinson & Witherop *v. Western New York and Pennsylvania R. R. Co.*, 389.

**CIRCUMSTANCES AFFECTING.**—Where relative rates are the same at points not far distant from each other on the same system of railroads, it is the practice of the Commission in determining the reasonableness of rates upon a complaint made at one of these points to consider the bearings and relative equality of rates at all of the points so situated, before ordering a change at any one of them in order to avoid preference to one and prejudice to another.

*In re* Petition of the Produce Exchange of Toledo, 588.

**ON DIFFERENT BRANCHES.**—A departure from the rule of equal mileage rates as applied to the several branches of the road is not conclusive

that such rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed.

Logan *et al.* v. Chicago & Northwestern R'y Co., 604.

See PREFERENCE AND ADVANTAGE; UNJUST DISCRIMINATION.

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Michigan Congress Water Co. v. Chicago and Grand Trunk R'y Co., 594.

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See INTERSTATE COMMERCE; REPORT OF INTERSTATE COMMERCE COMMISSION; LONG AND SHORT HAUL CLAUSE.

## TANK CARS.

*Scofield et al. v. Lake Shore and Michigan Southern R'y Co.*, 90.

*In re* Relative Tank and Barrel Rates on Oil, 865.

*Michigan Congress Water Co. v. Chicago and Grand Trunk R'y Co.*, 594.

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## TARIFFS.

PREPARATION OF.—The commission prefers to permit carriers to work out for themselves all tariff details, and accords a reasonable time for that purpose.

*Martin v. Southern Pacific Co. et al.* 1.

## SPECIAL.

*In re* Tariffs Transcontinental Lines, 824.

FILING AND THE PUBLICATION OF.—Reduction of passenger rates without consent of connecting lines over which tickets are sold, and without filing schedules thereof with the commission. *Held*, to be in violation of Section Six, of the Act to Regulate Commerce.

*In re* Passenger Tariffs and Rate Wars, 518.

Methods generally adopted by carriers in the preparation and publication of rate sheets, if in substantial compliance with the law, and sufficient for purposes of public information, while not necessarily to be accepted by the Commission as a standard, may be acquiesced in, until a better mode can be substituted.

*In re* Passenger Tariffs, 649.

New individual or joint passenger tariffs must be posted at stations to which they apply, and tickets can legally be sold on combinations of initial or terminal locals therewith.—*Id.*

## CIRCULAR RELATING TO CHANGES IN JOINT TARIFFS.

*In re* Joint Tariffs, Circular, 656.

## THROUGH LINES.

## IMPLY THROUGH RATES.

*Parkhurst & Co. v. Pennsylvania R. R. Co. et al.*, 181.

*Nicolai v. Pennsylvania R. R. Co. et al.*, 181.

## THROUGH RATES.

## RATE PER TON PER MILE.

*Business Men's Association v. Chicago, St. Paul, Minneapolis and Omaha R'y Co.*, 52.

*Business Men's Association of the State of Minnesota v. Chicago and Northwestern R'y Co.*, 73.

## THROUGH AND CONTINUOUS LINES IMPLY.

*Parkhurst and Co. v. Pennsylvania R. R. Co. et al.* 181.

*Nicolai v. Pennsylvania R. R. Co. et al.*, 181.

## FROM GROUPED STATIONS.

*Rend v. Chicago and North Western R'y Co.*, 540.

WHAT ARE.—A rate is none the less a through rate when freight is shipped upon a through bill of lading because the initial carrier charges its local rate as part of the total rate, and the remaining lines charged an agreed rate made by percentages.

*Chamber of Commerce of the City of Milwaukee v. Flint and Pere Marquette R. R. Co. et al.*, 553.

When a combined rate, evidenced by a through bill of lading has every substantial constituent of a through rate it is not necessary that it should be formerly quoted by one of the carriers to another who is engaged in the making of it, in order to constitute it a through rate. Names are nothing in such a transaction; the law looks at the elements and substance of the transaction itself.—*Ib.*

Through rates as such discussed and defined.—*Ib.*

**WHEN NOT ILLEGAL.**—Through rates are not necessarily illegal, which when divided between carriers give them less than their local rates, *provided* that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities or so low as to burden other business with part of the cost of the business upon which it is imposed.

Lippman & Co. v. Illinois Central R. R. Co., 584.

See COMBINATION RATES; REASONABLE RATES; UNJUST DISCRIMINATION; WATER AND RAIL LINES.

### THROUGH TICKETS.

See TARIFFS.

### TICKET BROKERS.

**BUSINESS OF. INVESTIGATED AND DESCRIBED.**

*In re* Passenger Tariffs and Rate Wars, 513.

See UNJUST DISCRIMINATION.

### TICKETS.

**COMMISSION ON THE SALE OF.**

Report of Interstate Commerce Commission, 467.

*In re* Passenger Tariffs and Rate Wars, 513.

**MILEAGE. EXCURSION AND COMMUTATION.**

*In re* Passenger Tariffs, 649.

See MILEAGE TICKETS; TARIFFS; ACTS TO REGULATE COMMERCE.

### UNIFORM CLASSIFICATION.

See REPORT OF INTERSTATE COMMERCE COMMISSION; CLASSIFICATION.

### UNJUST DISCRIMINATION.

**COMBINATION RATES.**—Rates obtained by combination which are lower than tariff rates for the same point are unjust and illegal.

Martin v. Southern Pacific Co. *et al.*, 1.

**BETWEEN SMALL AND LARGE TOWNS.**—Trade centers or large commercial towns are not, as a matter of right, entitled to have more favorable rates than the smaller towns for which they form distributing centers; and if carriers shall give to such smaller towns rates as favorable as to the larger the Commission will not interfere.

Martin *et al.* v. Chicago, Burlington and Quincy R. R. Co. *et al.*, 25.

The principles laid down in the case of Crews v. Richmond and Danville R. R. Co. (1 I. C. C. Rep., 401), restated and reaffirmed.



**TRANSPORTATION IN CARS OF OTHER COMPANIES.**—The law does not forbid a carrier from obtaining cars for the transportation of freight over its line from other carriers, or car furnishing companies, but in every such instance the rates of freight must be exactly the same and none other, as they would be if such cars were owned by the carrier so using them.

*Scofield et al. v. Lake Shore and Michigan Southern R'y Co.*, 90.

**TRANSPORTATION IN CARS BELONGING TO THE SHIPPER.**—The law does not forbid a carrier from obtaining cars from a shipper for the transportation of such shipper's freight over its line, but in every such instance, after deducting a reasonable rent published in the tariffs as part of the rate and made by the carrier to the shippers for the use of such cars, the rates must be exactly the same and none other as upon freight transported in the same service in the carrier's own cars.—*Ib.*

**MILK TRANSPORTATION.**—The existing arrangement by which the same rate is charged for the transportation of milk from all points reached by the regular daily milk trains of the defendant roads found to be not illegal, and on the whole to be the best system that can be provided for the general good of all interested parties.

*Howell et al. v. New York, Lake Erie and Western R'y Co. et al.*, 272.

**BY SPECIAL TARIFFS.**—Discriminations are made and undue advantages are given by the special tariffs in question, in giving different rates to places named and those not named to manufactured articles named and to those not named; to jobbers at places named and those not named; to manufacturers and to jobbers and other dealers.

*In re Tariffs of Transcontinental Lines*, 324.

**PASSENGER CLASSES.**—There is nothing illegal or wrongful in a railroad company making a rate for emigrants as a class, and declining to give the same rate to others for whom different accommodations are furnished.

*Savery & Co. v. New York Central and Hudson River R. R. Co. et al.*, 333.

**FREE TRANSPORTATION.**—The offense under Section two of the Act to Regulate Commerce of giving free transportation to an individual, consists in the charging, demanding, collecting or receiving, by the carrier from some other person or persons a compensation for a like service when none is contemporaneously charged or received from the person thus transported free.

*Griffiee v. Burlington and Missouri River R. R. Co. in Neb.*, 301.

Free transportation issued in the form of an annual pass to a person not in the regular and stated service of the carrier nor receiving any wages or salary under a contract of employment but requested by him as compensation for throwing in his way what business he conveniently could, *Held*, to be illegal.

*Slater v. Northern Pacific R. R. Co.*, 359.

**TRANSPORTATION OF PETROLEUM OIL.**—In cases against carriers who were charged with discriminating unjustly in their rates as against those shipping petroleum and its products in barrels in favor of those who shipped in tank cars, the evidence among other things showed that in the territory served by the defendants the shipment in barrels was most dangerous and also that when shipment was in

tanks there is greater likelihood of return loads. Differences in rates made by the carriers was considerable; the Commission equalized this, but still permitted a charge for the weight of the barrel. In the same cases it was incidentally made to appear that on the Pennsylvania system of roads some of the conditions affecting rates on this traffic were the reverse of those above stated, and the rates had theretofore been made the same by quantity whether the shipments were in tanks or in barrels. On the decision above referred to being made the rates on barrel oil were raised by the managers of the Pennsylvania system so as to include a charge for the weight of the barrel. This was claimed to be done in order to come into conformity with the action of the Commission. *Held*, That the action was unwarranted. A decision on facts does not establish a principle to govern where the facts are different, and no facts which had been laid before the Commission would have authorized a ruling raising the rates on the Pennsylvania Roads, on barrel oil, either absolutely or relatively.

*In re* Relative Tank and Barrel Rates on Oil, 365.

In arriving at what is a just and reasonable rate on oil transported by a carrier on a short local line having but a small volume of business, where the cost of transportation is exceptionally great the fact that an independent pipe line from Titusville to Buffalo transports oil between these points at lower rates than the railroad company constitutes no just reason why the railroad company should be required to reduce its rates to those of the pipe line.

Rice, Robinson & Witherop v. Western New York and Pennsylvania R. R. Co., 389.

The charge of unjust discrimination is not sustained by the evidence in this case.—*Ib.*

**TICKET BROKERS.**—The employment of ticket brokers and scalpers for the sale of railroad tickets placed in their hands to be disposed of at reduced rates under the pretense of paying commissions thereon. *Held*, illegal.

*In re* Passenger Tariffs and Rate Wars, 513.

Rates obtained from ticket brokers lower than those offered at the regular offices of the company effect unjust discrimination.—*Ib.*

**LOCAL AND THROUGH RATES.**—Through rates are not necessarily illegal which, when divided between carriers, give them less than their local rates, provided that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities or so low as to burden other business with part of the cost of the business upon which it is imposed.

Lippman & Co. v. Illinois Central R. R. Co., 584.

**RATES ON BRANCH LINES.**—The service may be rendered under such dissimilar circumstances as to make it lawful to charge more for the same distance on one line or branch line than on another line or branch of the same road.

Logan *et al.* v. Chicago and Northwestern R'y Co., 604.

A railway company while long maintaining a rate without the presence of competition on other than equal terms is making evidence that such rate is not too low.—*Ib.*

**JOINT WATER AND RAIL LINES.**—The fact that a railroad company makes joint arrangements with carriers by water for through carriage at through rates for one of its branch roads, will not charge it with